



## COUNCIL REPORT

To: Mayor and Council

Date: June 13, 2023

From: Paul Gipps, CAO

Subject: **Establishment of the West Kelowna Economic Development Corporation**

Report Prepared by: Allan Neilson, Neilson Strategies Inc.

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### **RECOMMENDATION** to Consider and Resolve:

**THAT** Council approve the formation of a West Kelowna Economic Development Corporation, created pursuant to section 185 of the *Community Charter* as a municipal corporation wholly-owned by the City of West Kelowna;

**THAT** Council direct the Director of Legal Services and Risk Management to request and obtain the approval of the Inspector of Municipalities to establish the Corporation; and

**THAT** Council direct staff to report back with confirmation of the approval from the Inspector of Municipalities, and outline next steps in establishing the Board of Directors.

### **PURPOSE**

This report:

- 1) Provides an overview of the work undertaken by staff on the review of the City's existing economic development service model;
- 2) Seeks Council's approval to form a West Kelowna Economic Development Corporation as the preferred service model going forward;
- 3) Seeks Council's direction to request and obtain the approval of the Inspector of Municipalities to establish the Corporation.

### **BACKGROUND**

The City of West Kelowna currently provides an in-house municipal economic development service alongside a local tourism function. The municipality is also a participant in the Central Okanagan Economic Development Commission (COEDC), which exists as an in-house regional service of the Regional District of Central Okanagan. Strong development coupled with new economic opportunities in West Kelowna prompted the City in late 2021 to examine its local and regional economic development service

efforts. Two facilitated workshops were held with Council on alternative models to consider. At the end of the second workshop Council made the following decisions:

- to separate the delivery of the City's economic development service from its tourism function, and to focus the service review on economic development
- to confirm the City's ongoing participation in and support for the COEDC
- to explore the establishment of an arm's-length, City of West Kelowna economic development corporation (WKEDC) as the vehicle to deliver an enhanced West Kelowna-focused local economic development service

Public information materials and consultations about Council's strategic priority to explore an external economic development model began in 2021 as outlined in Attachment IV. Council directed that staff engage the business sector, industry associations, public and non-profit economic development agencies, post-secondary institutions, the Westbank First Nation Economic Development Commission and other stakeholders on the potential establishment of a corporation. Stakeholder engagement, which occurred in early 2022, confirmed that there was considerable support for the corporation model and the creation of a separate corporation for West Kelowna. Stakeholders pointed to several advantages of an arm's-length WKEDC, including:

- an ability to act quickly in the pursuit of economic development opportunities without being incumbered by the process and other constraints that can govern in-house departments
- a governance structure with an autonomous board of directors, populated by business leaders and others with key stakes in the local economy
- an ability to ensure confidentiality to potential investors and new businesses interested in establishing or expanding operations in West Kelowna
- an ability to interact effectively with City administration, despite being a separate entity
- an ability to take on mandates and initiatives that would be difficult, if not impossible, to pursue within City Hall

Important factors required for the success of an EDC were also identified, including some based on the experiences of existing arm's-length economic development agencies in other jurisdictions (e.g., Chilliwack, Kamloops). Factors emphasized the need for:

- a West Kelowna economic development strategy, led by the corporation but with strong Council and industry input, to help inform the EDC mandate
- strategic planning for the corporation to set strategic priorities
- a clear understanding of the relationship between, roles and responsibilities of, and boundaries between the EDC and the City
- a strong level of collaboration with the region
- a board of directors with senior people from industry and business
- the value of formal protocols to set out the relationship with the municipality, but also the relationship between a West Kelowna EDC, the COEDC, the Westbank First Nation Economic Development Commission, and others

- stable, base funding (e.g., five-year agreements) from the City to enable the corporation to do its work (funding for key projects and initiatives can be raised from other sources)
- clear and reasonable metrics to assess and report on performance

Based on this feedback, as well as on the findings from the City's own research and discussions on service models, West Kelowna Council resolved to proceed with the creation of a WKEDC. Over the remainder of 2022, City staff created a proposed business plan (*Corporation Charter*) for the Corporation and the *Articles of Incorporation* required for establish and register the company. These documents were used as the basis for public information materials that were presented to the community over the course of a two-week consultation period in April 2023. Feedback provided by the public during this period — including feedback given at a public open house — was reported to Council in May 2023. This feedback provided further support for the formation of a WKEDC.

## DISCUSSION

To establish a WKEDC the City must submit and *Incorporation Application*, complete with the *Articles of Incorporation* and an *Incorporation Agreement*, to British Columbia's Corporate Registry. Before submitting the *Application*, however, the City must request and obtain the approval of British Columbia's Inspector of Municipalities to form the corporation.

The City's request to the Inspector must include a variety of documents and information materials, including:

- a resolution from Council that directs staff to seek incorporation
- the final draft *Articles of Incorporation*
- a legal opinion from the City's Solicitor (Director of Legal Services and Risk Management) to confirm that the *Articles* do not cause the City to incur any liability for the debts, obligations and action of the Corporation, and further than that Corporation, which is to be wholly-owned by the City, will be subject to the provisions of the *Freedom of Information and Protection of Privacy Act*
- a background report from the City's Solicitor to outline the rationale for the formation of the Corporation, comment on the duty of Council members to avoid conflicts of interest in interactions with the Corporation, outline the share ownership structure of the Corporation, and confirm that the City must adhere to the prohibition against providing assistance to the Corporation as a business
- background reports prepared by staff and used by Council in deciding to pursue the establishment of a corporation, and in structuring the Corporation
- information on the City's efforts to engage the public and stakeholder groups on the proposed WKEDC

This report speaks to the materials required for the City's submission. The report also introduces additional materials, not required by the Inspector, that have or that will need to be developed by the City to operationalize the WKEDC should it be approved by the Inspector.

### **Resolution from Council**

If approved by Council, the proposed resolutions in the Recommendation section of the report would be included, in certified form, in the submission to the Inspector.

**THAT** Council approve the formation of a West Kelowna Economic Development Corporation, created pursuant to section 185 of the *Community Charter* as a municipal corporation wholly-owned by the City of West Kelowna;

**THAT** Council direct the Director of Legal Services and Risk Management to request and obtain the approval of the Inspector of Municipalities to establish the Corporation; and

**THAT** Council direct staff to report back with confirmation of the approval from the Inspector of Municipalities, and outline next steps in establishing the Board of Directors.

### **Articles of Incorporation**

The *Articles of Incorporation* (Attachment I) is the chief legal document required to incorporate and register the Corporation, pursuant to the *Business Corporations Act*. The *Articles* deal with the Corporation's share structure and changes to the structure, borrowing powers, shareholder meetings and meeting procedures, the appointment/removal of directors and the powers of directors, procedures for board meetings, the creation of board committees, the appointment of officers, financial matters including the payment of dividends and the appointment of an auditor. The Corporation's purpose and restrictions on its activities are also listed in the *Articles*.

### **Legal Opinion and Solicitor's Report**

The City's Solicitor has provided the required legal opinion and background report. Both documents will be included in the submission to the Inspector.

### **Background Reports**

Attachment II presents the range of background reports and workshop materials used by Council in selecting the municipal corporation option as the preferred service model for the City's local economic development service.

Attachment III presents the *Corporation Charter*. The *Charter* is a non-legal document that serves as the business plan for the WKEDC. It provides a full overview of the agency including:

- its purpose as the strategic business development agency created by the City of West Kelowna to lead efforts aimed at building West Kelowna's economy
- its list of responsibilities, which highlight the creation of a *West Kelowna Economic Development Strategy*, efforts to attract business, employers and investment to West Kelowna, the development of West Kelowna branding, the coordination of economic development activities taken by a range of other groups, the creation of programs to retain and expand existing businesses, and the provision of advice to the City to ensure that its policies, regulations and services support business growth
- the legal structure of the WKEDC as a City of West Kelowna local government corporation, created under section 185 of the *Community Charter*, and incorporated under British Columbia's *Business Corporations Act*
- the Corporation's ownership structure, which identifies the City of West Kelowna as the sole shareholder
- the range of decisions on the Corporation that are the prerogative of the City as shareholder, including decisions related to mandate, ownership, governance, expansion and funding of the Corporation
- all information on the WKEDC's autonomous board of directors, including the board's structure, duties and responsibilities, use of committees, method of reporting to the shareholder
- the Corporation's funding model, which provides for base funding through under the terms of a service agreement, and which sets out expectations for raising project funding
- the role and responsibilities of the Corporation's chief executive officer
- other operating considerations
- the expectation of a five-year review

Appended to the *Charter* are estimates of annual base costs and start-up costs that would be incurred by the Corporation.

### **Stakeholder and Public Engagement**

As noted earlier in the Background section, the City began providing preliminary information about Council's consideration of an external model for economic development in 2021. The City subsequently engaged stakeholder groups and the public in 2022 to explore the concept of an economic development corporation in greater detail. The support received from groups at that time informed Council's decision to pursue the establishment of a corporation for West Kelowna. In 2023, the City also engaged the

broader community on the proposed WKEDC to inform and seek input for Council's consideration. A public *Information Package* was made available online and in hardcopy form at a public open house. The availability of the *Package*, the details on the open house, and the means for providing input were announced through news releases, paid advertisements, posted on the City's website, broadcast through social media channels and more.

The *Information Package*, news releases and other materials are provided in Attachment IV. Also provided are the full results of input received from the community.

### **Other Documents**

A *Service Agreement* (Attachment V) has been drafted to allow the City to contract the WKEDC (once incorporated) to provide specific, enumerated services to the community. The *Agreement* requires the Corporation to deliver a work plan and budget to the City each year, and to present to Council on work undertaken and outcomes achieved. The City is required under the *Agreement* to provide a set level of annual funding (i.e., payment) to the Corporation in exchange for the services provided.

The *Service Agreement*, it should be made clear, is between the City and the WKEDC. It would only be entered into once the Corporation were incorporated, and once the agency had its own board of directors appointed (the board would need to sign the *Agreement*). The *Agreement* is included here because of its importance to the WKEDC's proposed funding model which relies on funds, paid by the City in exchange for services provided, to cover all annual base costs.

An additional document that would be developed following approval by the Inspector is a *Shareholder Agreement*. This *Agreement* would set out the rights and obligations of the City as the sole shareholder, and of the Corporation's board of directors. Among other provisions, the *Shareholder Agreement* would reserve for the City the authority to:

- amend to the *Articles* (subject to approval by the Inspector), and amend or repeal the bylaws
- appoint and remove board directors
- appoint officers of the Corporation
- approve the annual business plan and budget
- set limits on borrowing
- approve the issuance of shares
- approve any transaction out of the ordinary course of business
- approve changes to the authorized signing officers
- undertake certain other significant matters

The rights of the City set out in a *Shareholder Agreement* would supersede certain sections of the *Articles of Incorporation*, including (for example) those on the issuance and transfer of shares.

One final document that Council may wish to create, post-incorporation, is a *Partnering Agreement*. This *Agreement* would enable the City to provide assistance to the Corporation in the form of City assets, provision of office space, loans, debt guarantees or other forms. To comply with the restrictions in the *Community Charter* on providing assistance to a business, the *Partnering Agreement* would set out the services provided by the Corporation to the City. Section 21 of the *Community Charter* provides for partnering agreements for the provision of a service on behalf the municipality.

## **NEXT STEPS**

If Council supports the recommended resolutions, the City's Director of Legal Services and Risk Management will submit the required materials to the Inspector of Municipalities and seek the Inspector's approval. If approval is provided, the City will need to:

- finalize, for signing by the City and the Corporation, the *Services Agreement*
- prepare a *Shareholder Agreement* and a *Partnering Agreement*, also for signing by the City and the Corporation
- update Council on approvals and next steps
- begin the process to recruit the inaugural Board of Directors and CEO

Additionally, the CEO, once in place, will be responsible for securing office space and putting in place the foundational elements to enable the WKEDC to begin business. The CEO will also play an important role in Board orientation and strategic planning.

## **FINANCIAL IMPLICATIONS**

The Finance department has confirmed a budget of \$227,000 allocated for economic development expenses in 2023. Currently, the year-to-date spending stands at just under \$15,000. Taking into account the estimated operating costs of the WKEDC and considering the timing of its implementation, there appears to be a reasonable amount of budget available to support its activities this year. Funds from the 2022 budget of \$115,000 were carried forward to assist with start-up costs. Further analysis will be done during the 2024 budget process to incorporate annual costs going forward.

## **REVIEWED BY**

Brad Savoury, Director of Legal Services and Risk Management

Sandy Webster, Director of Corporate Initiatives

Corinne Boback, Legislative Services Manager / Corporate Officer

Warren Everton, Director of Finance / CFO

**APPROVED FOR THE AGENDA BY**

Paul Gipps, CAO

PowerPoint: Yes  No

Attachments:

- 1) *Incorporation Agreement and Articles of Incorporation*
- 2) *Background Reports and Workshop Materials*
- 3) *Corporation Charter*
- 4) *Information Package and Engagement Materials*
- 5) *Service Agreement*