

MEMORANDUM

TO: Trevor Seibel, Deputy Chief Administrative Officer
City of West Kelowna

FROM: Allan Neilson, Principal
Neilson Strategies Inc.

DATE: December 6, 2023

SUBJECT: ECONOMIC DEVELOPMENT CORPORATION — START-UP TASKS

1. INTRODUCTION

Thank you for meeting with me to discuss the start-up tasks required to bring the West Kelowna Economic Development Corporation (WKEDC) to fruition, now that the Inspector of Municipalities has granted approval to the City to create the Corporation. This memorandum builds on our earlier discussion. The memo begins by listing and describing the specific tasks that must be undertaken to register and prepare the WKEDC for business. The memo then places the tasks in order and assigns responsibility for them to key parties.

2. TASKS TO UNDERTAKE

The full list of tasks that must be undertaken to bring the Corporation to fruition can be broken into three categories:

- tasks to address legal requirements
- tasks to address governance needs
- tasks to address administrative needs

The three categories and their associated tasks are outlined in this section of the memo. Every effort has been made to identify the most important tasks. Additional tasks not identified will be added over the course of implementation in response to needs — unforeseen or otherwise — that arise.

2.1 Tasks to Address Legal Requirements

The Inspector of Municipalities has granted approval to the City to incorporate the WKEDC. This approval enables the City to proceed with incorporation, but does not result in incorporation itself. The City must file an *Incorporation Application* with the British Columbia Registrar of Companies through the Corporate Online BC Registry platform.

- *Incorporation Application* — Tasks related to the filing are as follows:

- complete and file a *Name Request* form to reserve "West Kelowna Economic Development Corporation" as the name for the entity (or, alternatively, to select and reserve a new name, such as "West Kelowna Economic Prosperity Corporation")
- prepare and sign an *Incorporation Agreement*
- finalize the *Articles of Incorporation*
- prepare and sign *Notice of Articles*, complete with the name of the Corporation, the names of the *First Directors*, the *Registered Office* address, the *Records Office* address, and the *Authorized Share Structure*

To prepare the *Application* for incorporation, Council will need to identify and appoint the *First Directors* to the Board. Council may choose to advertise the opportunity to serve as a WKEDC Director, or may choose to canvass business and other community leaders to identify potential candidates for Board positions. If the latter course of action is selected the City will need to develop a short-list of candidates, approach individuals on the list and interview all persons. Preferred candidates would be offered a Board placement and asked to provide written consent. Council would approve the proposed Board composition by resolution.

The *Registered Office* is the location, required under the *Business Corporations Act*, at which the Corporation will receive official documents related to incorporation. The *Records Office* is the location at which all records for the company will be stored. The *Registered Office* and *Records Office* will likely be the address of the legal firm used by the City to handle incorporation.

- *Inspector of Municipalities* — The Registrar of Companies will provide to the WKEDC a *Certificate of Incorporation*, certified copy of *Incorporation Application*, certified copy of the *Notice of Articles*, and other official documents required to be held by the Corporation. The Corporation will submit these documents, along with a copy of the *Articles of Incorporation*, to the Inspector of Municipalities.
- *WKEDC Legal Proceedings* — At its inception, the EDC will need to undertake certain tasks required to finalize its legal structure:
 - hire independent legal counsel
 - change address of *Registered Office* and *Records Office* to that of chosen legal counsel
 - pass Board resolutions to approve the issuance of one share in the Corporation to the City, the appointment of Board officers, the assignment of signing authority, the identification of banking details, the appointment of the chosen Auditor, and the designation of an individual to handle matters under the *Freedom of Information and Protection of Privacy Act* (FOIPPA)

- *Legal Agreements* — The Board of Directors will need to negotiate and enter into a five-year *Partnering Agreement* (also referred to as a *Service Agreement*) with the City. The *Partnering Agreement* is required under the *Community Charter* to enable the City to provide assistance, in the form of annual operating funds and other assets or tools, to the Corporation.

The City and the Corporation may choose to enter into two partnering agreements: an *Interim Partnering Agreement* to enable the City to transfer funding required by the Corporation for start-up expenses, including funds to retain its legal counsel; and a *Final Partnering Agreement*, negotiated by the Corporation with the assistance of legal counsel, to secure the annual operating funds and any additional assistance from the City.

The City will need to publish separate *Notices of Partnering Agreement* and *Notices of Assistance*, as per the *Community Charter*, to enter into the *Interim* and the *Final Partnering Agreements*.¹

2.2 Tasks to Address Governance Needs

The Board of Directors will be the governing body of the WKEDC. The City of West Kelowna, as the sole shareholder in the Corporation, is responsible for determining the size, composition and powers of the Board, and for appointing the members of the Board. The City has addressed all of these points in the Corporation's *Charter* and *Articles of Incorporation*. As outlined in these documents:

- *Size and Composition* — The Board of Directors will consist of seven (7) voting Directors and two (2) non-voting Directors. The two (2) non-voting Directors include one (1) member of City Council and either the Chief Administrative Officer or one (1) senior manager from the City. The seven (7) voting Directors are expected, as a collective, to provide balanced representation across economic sectors in the City, and across different skill sets and experience necessary for good corporate governance.
- *Powers* — The Board is designed to be an autonomous body. It will set strategies for the Corporation, approve budgets, enter into agreements and contracts, establish committees, and establish the policies and protocols necessary to run the Corporation effectively. The Board is accountable to the City (i.e., sole Shareholder) for the performance of the Corporation.

Council appoints all voting Directors and all non-voting Directors to the WKEDC Board. When the *Incorporation Application* is submitted to the Registrar of Companies, Council will need to identify the names of the *First Directors* in the *Notice of Articles*. Council will need, therefore,

¹ Additional legal agreements would be required if the City agreed in the future to provide additional forms of assistance, such as City lands at below market value, or loans.

to identify and appoint the nine (9) Directors, including the two (2) non-voting Directors, prior to having the WKEDC incorporated. Council could choose to select and approach individuals already known to Council to populate the inaugural Board. Alternatively, Council could advertise the positions available and select the inaugural Board through a competitive public process.

A competitive public process has merits. It would, for example, be perceived by some in the community as inclusive, transparent and fair. It could also draw out qualified individuals not known to the City. Council may find it preferable, however, to select individuals for the *First Directors* positions who are recognized business and sector leaders in the community, and whose presence and participation would lend instant credibility to the Corporation and help to position it for a successful start-up. For the purposes of this memorandum, it is assumed that Council would directly select and appoint the *First Directors*.

Subsequent appointments to the Board, after the appointment of *First Directors*, would be made by Council based on recommendations developed by the Board's Governance and Nominating Committee, and submitted to Council by the Corporation's full Board.

Once in place, the inaugural Board will need to take certain actions. Several resolutions will need to be passed to address legal needs, as noted earlier under section 2.1 of this memorandum. Other actions to take are as follows:

- *Recruit Chief Executive Officer* — An early and important task for the Board will be to recruit and hire a Chief Executive Officer (CEO) for the Corporation. Funding for the process would be drawn from start-up funds provided by the City, pursuant to the *Interim Partnering Agreement*. An executive search firm would, in all likelihood, be hired by the Board to provide support.
- *Participate in Board Orientation* — The full Board would participate in a comprehensive orientation program designed to help Directors understand:
 - the purpose of the WKEDC and its scope of activities, as well as Council's decision to create a separate corporation
 - the Corporation's legal status, *Articles of Incorporation*, and other elements of the legal structure
 - the roles and responsibilities of the Board, of individual Directors, and of Officers of the company
 - procedures to be followed for Board meetings, Committee meetings and the Annual General Meeting
 - the full WKEDC service model — including its funding model — as outlined in the Corporation's *Charter*
 - the Corporation's staffing model, the Board's role as employer, and the Board's relationship to the CEO

- the structural, legal and working relationships between the Corporation and the City of West Kelowna (including annual reporting to the City)
 - West Kelowna's economy, the range of agencies in West Kelowna engaged in some form of economic development, and the history of the City's economic development service
 - a range of other matters
- *Elect Officers* — It will be important for Directors to elect, from among their own number, individual Directors to fill key officer positions. Typical positions include Chair, Vice Chair, Treasurer and Secretary.
 - *Create Committees* — The *Articles of Incorporation* enable the Board to create an Executive Committee and others that the Board feels are required to assist the Board in its decision-making. The Corporation *Charter* envisions at least two committees:
 - Audit & Finance Committee (as required under the *Business Corporations Act*)
 - Governance & Nominations Committee

The appointment of the CEO is a task that will require early consideration by City Council. Council could itself recruit and hire a CEO for the Corporation, either before or at the same time Council chooses the *First Directors*. Alternatively, Council could leave recruitment and the choice of CEO to the inaugural Board. The primary advantage of the first approach is that the new CEO would be in place to help steer the new Board through orientation and start-up. The new CEO would also be able to quickly move the Board into strategic planning, which will be important in confirming the Corporation's purpose and mandate, refining its full scope of activities, and setting its priorities. The potential downside of approach is the perceived infringement by Council on the Corporation's autonomy. The CEO will be the Board's sole employee, and will play an instrumental role in helping the Board and Corporation succeed. The Board needs to have full confidence in the person appointed as CEO.

A decision by Council to leave CEO recruitment to the new Board would reinforce the Board's autonomy. The decision would also, however, require the City to contract an individual to oversee the start-up of the Corporation, and assist the Board through the recruitment process. Funding for the Contractor could be taken from the amount of start-up funds the City would otherwise provide to the Corporation.

Both approaches have merits and disadvantages. In an effort to move quickly into implementation, and to reinforce the Corporation's autonomy, it is assumed that Council will:

- leave CEO recruitment to the inaugural Board
- assign a qualified Contractor to oversee implementation, and to assist the Board in the CEO recruitment process

2.3 Tasks to Address Administrative Needs

There are a number of administrative tasks that need to be undertaken to enable the Corporation to begin operations. Key tasks include:

- *Office Space* — Securing office space for the WKEDC's operations will be an important early step. To reinforce the Board's autonomy and the separation of the organization from the City administration, office space located outside of City Hall should be considered. Opportunities to share space with a business association or similar body may exist and could be pursued.
- *Banking* — Bank accounts will need to be opened to enable the Corporation to receive monies and pay bills.
- *Website and Office Administration* — Interest in the Corporation will be high from the organization's inception. It will be important for the organization to establish an online presence, even if only in the form of a place-holder website. Telephone numbers and email addresses will also be needed, as will office furniture, computers and other items.
- *Insurance* — The organization will need to purchase insurance to mitigate risks associated with equipment and premises, business operations, and the actions of Board Directors.

3. SEQUENCING AND ASSIGNMENT OF TASKS

Figure 3.1 presents the various legal, governance and administrative tasks in order of sequence, and identifies the party responsible for each. The sequencing in Figure 3.1 calls on the City, as the first order of business, to appoint a Contractor — noted earlier — to oversee the entire implementation process. The Contractor would be responsible for preparing the materials and providing the guidance required by the other parties (e.g., Council, Board) to address tasks assigned to them.

Figure 3.1
Sequence and Assignment of Tasks

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