

Municipality of Chatham-Kent

Entegrus Inc.

Open Session

To: Mayor and Members of Council
From: Jim Hogan, President and CEO of Entegrus
Date: February 1, 2021
Subject: Approval of Entegrus Shareholder's Waiver

Recommendation

It is recommended that:

1. The Mayor and Clerk be authorized to execute a Waiver, Resolution and Direction of the Shareholders of Entegrus Inc., as described in this report, subject to review and approval of such a document by the Municipality's Director, Legal Services.

Background

Entegrus is governed by the terms of the amended and restated shareholder agreement dated April 1, 2018. The agreement is between Corix Infrastructure Inc., The City of St. Thomas, The Municipality of Chatham-Kent and Entegrus. Section 2.1 of the shareholder agreement directs the Board to operate and expand the fibre business in SW Ontario.

Comments

The Entegrus group of companies ("Entegrus") have received an unsolicited offer to purchase the data center in Chatham-Kent, and the fibre business in St Thomas. Also included in the potential transaction is land that the data center is situated on, a solar array system that is on the roof of the data center and a portion of the land that the Entegrus office is on in St Thomas.

Entegrus' core business is the distribution of electricity; the two businesses being contemplated for sale are not integral to the core business.

The Shareholders are being asked to approve a Waiver, Resolution and Direction of the Shareholders that will allow the Board to have management explore and recommend a transaction. It also allows the Board to approve, by way of Extraordinary Approval (100%), a transaction that will benefit Entegrus and its shareholders.

Areas of Strategic Focus and Critical Success Factors

The recommendation in this report supports the following areas of strategic focus:

Economic Prosperity:

Chatham-Kent is an innovative and thriving community with a diversified economy

A Healthy and Safe Community:

Chatham-Kent is a healthy and safe community with sustainable population growth

People and Culture:

Chatham-Kent is recognized as a culturally vibrant, dynamic, and creative community

Environmental Sustainability:

Chatham-Kent is a community that is environmentally sustainable and promotes stewardship of our natural resources

The recommendation in this report supports the following critical success factors:

Financial Sustainability:

The Corporation of the Municipality of Chatham-Kent is financially sustainable

Open, Transparent and Effective Governance:

The Corporation of the Municipality of Chatham-Kent is open, transparent and effectively governed with efficient and bold, visionary leadership

Has the potential to support all areas of strategic focus & critical success factors

Neutral issues (does not support negatively or positively)

Consultation

The Chief Administrative Office and the Director, Legal Services were consulted and agree with the recommendations in this report.

Financial Implications

There are no financial implications resulting from the recommendation.

Prepared by:

A handwritten signature in black ink, appearing to read "Jim Hogan". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Jim Hogan
President and CEO
Entegrus Inc.

Consulted and confirmed the content of the consultation section of the report by:

Dave Taylor, Director, Legal Services

Attachment(s):

Entegrus Shareholder Waiver Resolution and Direction (Sale of Fibre Assets)

**WAIVER, RESOLUTION AND DIRECTION OF THE SHAREHOLDERS OF
OF
ENTEGRUS INC.
(the “Corporation”)**

Sale of Fibre Business

- A. The Corporation is governed by the terms of an amended and restated shareholders agreement dated _____, 2018 between Corix Energy Inc., The Corporation of The Municipality of Chatham-Kent, The Corporation of The City of St. Thomas and the Corporation (the “**Shareholders’ Agreement**”).
- B. Capitalized terms used herein and not defined have the meanings set forth in the Shareholders’ Agreement.
- C. Section 2.1(o) of the Shareholders’ Agreement obligates the Shareholders to vote and cause the Corporation and its management to, among other things, operate the Fibre Business in South-Western Ontario on a day to-day basis.
- D. The Corporation is required pursuant to Section 2.9 of the Shareholders’ Agreement to use commercially reasonable efforts to expand the Fibre Business in the City of St. Thomas, the Municipality of Chatham-Kent and, where considered appropriate by Corporation’s management, in other areas within South-Western Ontario.
- E. The Shareholders have agreed to: (i) waive Section 2.1(o) and Section 2.9 of the Shareholders’ Agreement with respect to the operation and expansion of the Fibre Business on the terms and conditions set out herein, and (ii) authorize the Board to cause management to investigate and explore one or more transactions to sell the Fibre Business and the data centre owned by Entegrus Services Inc. (“**ESI**”) (whether directly or indirectly through the sale of all of the issued and outstanding shares in the capital of ESI to a third party) (the “**Proposed ESI Sale**”) and, subject to receipt of Extraordinary Approval, the Board is authorized to proceed with a Proposed ESI Sale on such terms and conditions as the Board may approve.

RESOLVED THAT:

- 1. Section 2.1(o) and Section 2.9 of the Shareholders’ Agreement with respect to operation and expansion of the Fibre Business are hereby waived by the Shareholders.
- 2. The Shareholders hereby authorize the Board to cause management to investigate and explore a Proposed ESI Sale and, subject to receipt of Extraordinary Approval, the Board is authorized to proceed with a Proposed ESI Sale on such terms and conditions as the Board may approve.
- 3. Any director or officer of the Corporation and ESI is authorized and directed, on behalf of Corporation and ESI to execute and to deliver all documents, instruments and other writings and to perform and do all acts and things as that director or officer considers necessary or desirable to give effect to these resolutions.

4. The terms of this Waiver, Resolution and Direction of the Shareholders will prevail in the event of any inconsistency or conflict between the terms of the Shareholders' Agreement and this Waiver, Resolution and Direction of the Shareholders.
5. This Waiver, Resolution and Direction of the Shareholders may be executed and delivered in one or more counterparts, each of which will be an original, and each of which may be delivered by e-mail or other functionally equivalent electronic means of transmission, and those counterparts will together constitute one and the same instrument.

[SIGNATURE PAGE FOLLOWS]

These resolutions are consented to by all of Shareholders under as evidenced by the signatures below.

DATED the _____ day of _____, 2021

**THE CORPORATION OF THE CITY OF
ST. THOMAS**

Name:
Title:

Name:
Title:

**THE CORPORATION OF THE CITY OF
CHATHAM-KENT**

Name:
Title:

Name:
Title:

CORIX ENERGY INC.

Name:
Title:

Name:
Title:

ACKNOWLEDGED AND CONFIRMED as of the date above.

ENTEGRUS INC.

Name:
Title:

Name:
Title: