

RL

THIS OPERATING AGREEMENT made in triplicate as of this 29 day of July, 2016

BETWEEN:

THE CORPORATION OF THE CITY OF NORTH BAY

Hereinafter called the "City"

of the First Part

AND

INVEST NORTH BAY DEVELOPMENT CORPORATION

Hereinafter called the "DC "

of the Second Part

WHEREAS the City is a municipal corporation duly incorporated pursuant to the laws of the Province of Ontario;

AND WHEREAS the DC is a corporation without share capital duly incorporated pursuant to the laws of the Province of Ontario;

AND WHEREAS the primary purpose of the DC is to promote community economic development with the co-operation and participation of the City, investors and private sector partners as appropriate to maximize the value of current and future City owned assets with the focus on growing and developing the City. In addition, the DC will act as a catalyst for operational excellence as well as provide advice, inform and make recommendations to the City, as owner, on matters and opportunities pertaining to the operations of the DC and affiliated subsidiaries.

Additionally the DC is to create a supportive environment for long-term economic and community growth and to foster municipal innovation to help make North Bay an attractive place to invest and do business.

The objects of the DC are more particularly stated herein.

The City and the DC will strive to work together to ensure a consistent and coordinated overall economic development strategy to support the long-term economic and community development of the City;

AND WHEREAS the parties wish to establish the terms and conditions of their respective obligations with respect to the operation of the DC, including but not limited to the joint use of certain facilities and services.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS HEREIN CONTAINED, THE PARTIES AGREE AS FOLLOWS:

1. Corporate Status and Governance

The DC agrees that:

- a) It shall not amend its Letters Patent without the express written consent of the City;
- b) The DC's board of directors shall always include the City's Mayor, a minimum of two (2) City Councilors and the City's Chief Administrative Officer (collectively herein the "City's Representatives");
- c) That the maximum number of directors including the City Representatives shall not exceed 14. All directors shall be expressly approved by the City Council;
- d) The Manager of the Economic Development Department and the Managing Director of Community Services will attend meetings as ex-officio members of the DC board without voting rights; and
- e) The DC will not establish other corporations or subsidiaries without the express written consent of the City.

2. Development Corporation Services and Responsibilities:

The DC, in fulfilling its objects as set out in its Letters Patent shall provide, from time to time, as a minimum and as circumstance may require the following services:

- a) Act as the primary economic development organization in the City for the attraction of investment to the community;
- b) Support existing and emerging business development opportunities;

- c) Develop and implement strategies that support long-term economic development activities;
- d) Support business retention and expansion activities;
- e) Market and promote the City for business and investment opportunities in an effective, responsible, and efficient manner;
- f) Promote a list of available commercial and industrial property, both public and private for sale, lease or development for the benefit and growth of the community and region. The list will be developed with the assistance of relevant City departments;
- g) Identify, source and promote funding opportunities from both government and private sectors;
- h) Advocate for regional business concerns and opportunities in coordination with the City and the Economic Development Department; and
- i) Liaise with Federal and Provincial development agencies, educational institutions, employment agencies, and community partners.

Responsibilities:

The DC covenants and agrees that it will:

- a) Have a fiscal year ending December 31st;
- b) Develop an annual operating budget, and a capital plan as appropriate. The DC will follow the City's timelines and formats where necessary;
- c) Develop and implement corporate policies, procedures and support services to ensure the DC can carry-out its operation in an effective, responsible, and efficient manner;
- d) Provide input to the City in the development of its strategic plans in order to effectively position the City as a preferred development location;
- e) Within 120 days of year-end the DC submit an annual report outlining the prior year's performance, financial performance, and operational, business development and marketing activities of the Corporation;

- f) Pursue various funding sources from both government and private sectors;
- g) Pursue strategic partnerships and other investment opportunities for the purposes of leveraging the annual funding provided by the City; and
- h) Utilize financial or operating structures for investment in economic development activities that may include, but are not limited to, the following: partnership agreements, joint ventures, land and building purchases, rental agreements, and equity investments in private and public sector projects and opportunities.

3. Measurements of Success:

The DC will be expected to develop and report annually on metrics relevant to the organization's mandate and goals. These may include, but are not limited to, the following:

- a) Job creation and retention from new growth and expansion projects;
- b) Investment attraction (i.e. new buildings, equipment, grants, quality jobs, expanded services, land purchases and sales, new company relocations, etc.);
- c) New business development; (i.e. business openings, new and expanded services, partnership/JV agreements signed, building applications);
- d) New tax assessment; and
- e) Business support initiatives.

4. City Responsibilities to the DC:

The City covenants and agrees that it will:

- a) Provide core funding to the DC as approved annually by City Council through the City's established budgeting process, the timing and requirements of which will be communicated to the DC;
- b) Provide office space in a City owned facility along with equipment, furniture, fixtures, supplies and other materials. The City, at its

discretion, may determine what is necessary and appropriate in the circumstances;

- c) Appoint City representatives as board members as required under the by-laws of the Corporation (By-law No. 1) and as permitted by this agreement;
- d) Subject to Section 4.c), approve the final appointment of all board members, upon the recommendation of the DC. The City reserves the right to remove any member at its sole discretion;
- e) Maintain a current inventory of all available commercial and industrial property and make this inventory available to the DC on a timely basis;
- f) Subject to any confidentiality or non-disclosure agreement that a proponent may require the City to enter into, the City's Economic Development Manager will share all relevant business expansion opportunities with the DC chair(s), who will then engage the DC board or appropriate members of the DC board to support the efforts as required;
- g) Procure and maintain adequate insurance coverage including Director's Liability Insurance. However, it is expected that when the DC is self-sustaining it shall obtain its own insurance policy;
- h) Until such time as the DC is self-sustaining the following corporate support services will be provided:
 - i. Legal
 - ii. Financial, including but not limited to payroll administration, banking, accounting, reporting for government programs, internal audit services;
 - iii. Building services;
 - iv. Purchasing services;
 - v. Human Resources services; and
 - vi. Communication and Information Technology
 - vii. Clerical Services

In this agreement the term "self-sustaining" means DC generates enough revenue in exchange for its products and services to cover all of its expenses, from payroll, to inventory, to rent and utilities.

5. Staffing

- a) The City and the DC agree that during the Term of this agreement the City's Economic Development will support the DC Board goals, mandate and initiatives as reasonably required by the DC and approved by the City in its sole discretion;
- b) The City will dedicate the equivalent of one Business Development Officer (1 FTE) to support investment attraction initiatives of the DC; and
- e) The DC recognizes that the Economic Development Staff are, and will remain, City employees.

The DC shall assume responsibility for its own employees, organizational structure, staff complement, and salary levels. Benefits will be provided through the City's benefit providers at the sole discretion of the DC.

6. Accountability, Reporting, Records, Audits and Financials

- a) The DC will be responsible and accountable to the Council of the Corporation of the City of North Bay;
- b) The DC agrees to provide the City with an Annual Report and financial statements within 120 business days of the fiscal year end of the DC. The annual report shall highlight the year to date activities, operations and performance of the DC;
- c) The DC agrees to provide to the City with the Annual Report audited financial statements the costs of which shall be borne by the DC by an auditor selected by the City. The requirement of the audit will be at the discretion of the City's Chief Financial Officer and determined at the end of each fiscal year;
- d) The Annual Report shall contain details of the services contemplated by this agreement, performance measures for evaluation purposes, financial summaries and other sufficient information to enable the City to give reasonable consideration of the DC's performance;

- e) The DC will retain all financial and non-financial records, including but not limited to all records relating to its operations operation, agendas and minutes. The DC shall keep separate financial records for all amounts incurred, claimed, paid and received, and shall retain and preserve all documents, contracts, records, claims and accounts that relate thereto for a minimum period as specified by the City's Record Retention By-law;
- f) In the event of termination of this agreement the DC agrees that it shall transfer all of its financial and non-financial records to the City at no cost to the City; and
- g) The DC shall, upon written request from the City, provide the City any additional records and reports as the City may request from time to time at no cost to the City.

7. Representations, Warranties, Covenants

DC represents warrants and covenants that:

- a) It validly exists as a legal entity, and will continue to exist for the Term of the agreement, with full power to perform and observe all of the terms and conditions of this agreement;
- b) It has the authority and any necessary approvals to enter into this agreement and to carry out its terms and conditions and that it is not bound by any other agreement that would in any way interfere with City's rights under this agreement;
- c) It is conducting its business in accordance with all requirements of the law and it shall continue to conduct its business in accordance with all requirements of the law; and
- d) It has or will acquire as may be necessary all permits, approvals, licenses, certificates or other similar documents that are required to carry on its business.

8. Governance

DC represents warrants and covenants that it has and shall maintain during the Term of this agreement all legally necessary instruments to:

- a) Establish and maintain procedures to ensure the ongoing effective functioning and continuance of the DC for the Term of this agreement;
- b) Establish and maintain decision-making mechanisms;
- c) Provide for the prudent and effective management of the DC and related operations;
- d) Establish procedures to enable the timely identification of risks that would interfere with the DC meeting its obligations under this Agreement and strategies and solutions to address the identified risks and the DC shall notify the City immediately of such risks, strategies and solutions;
- e) Establish procedures to enable the preparation and delivery of all reports and financial statements under this Agreement; and
- f) Be responsible for other matters as the DC considers necessary to ensure that the DC carries out its obligations under this Agreement.

The DC may adopt existing City by-laws, policies or procedures if applicable (herein after the "Policies") and as such Policies may be implemented from time to time. The said Policies shall be read with such changes as may be reasonably required to apply to the DC.

9. Indemnification

The Parties shall each indemnify and save harmless the other from and against all claims, losses, damages, judgments, costs, expenses, actions and other proceedings made, sustained, brought, prosecuted or threatened to be brought or prosecuted and are based upon, occasioned by or attributed to any bodily injury to or death of a person or damage to or loss of property caused by any negligent act or omission on the part of the indemnifying party, its officers, employees, students, agents or volunteers arising out of this agreement.

10. Dispute Resolution

In the event that any claim, dispute or other matter (herein referred to as a "dispute") shall arise between the parties during the term of the agreement, the following process shall apply:

Escalation Levels

- a) Level I: The dispute shall be referred initially by the party raising the dispute to the other party in writing. For the purposes of this level, the initial reference of the dispute shall be to the level of the Managing Director of Community Services for the City and a delegate of the DC. In the event that the dispute cannot be resolved within 10 business days, the dispute shall escalate to Level II;
- b) Level II: For the purposes of this level, the initial reference of the dispute shall be to the level of the Chief Administrative Officer for the City and the Chair of the DC for the DC. In the event that the dispute cannot be resolved within 10 business days, the dispute shall escalate to Level III; and
- c) Level III: In the event that the dispute remains unresolved between the parties, it shall be submitted to City Council by the Chief Administrative Officer for the City and the full board of the DC for the DC for determination. The decision of City Council shall be final and binding.

Each party shall bear their own costs with respect to resolving the dispute.

11. Term and Termination

11.1 Term

- a) This agreement shall come into effect as of the date first above written and shall continue in effect for a period of 5 years unless terminated earlier in accordance with the terms of this agreement. The DC and the City shall have the option to renew for a further 5 year period if mutually agreeable.

11.2 Events of Default

Any of the following constitutes events of default, the proof of which to the contrary lies upon the DC;

- a) The DC is in breach of the performance of, or in compliance with, any term, condition, or obligation on its part to be observed or performed as contemplated under this agreement;

- b) The DC becomes bankrupt or insolvent, goes into receivership, or takes the benefit of any statute from time to time being enforced relating to bankrupt or insolvent debtors;
- c) An order is made or resolution is passed for winding up or for the dissolution of the DC or it is dissolved;
- d) The DC ceases as a bona fide operation for a period of 30 business days; and
- e) The DC knowingly submitted false or misleading information to the City.

If a Default as specified in a) occurs and the DC does not remedy the default within such period as the City allows in written notice, or in any event of default as provided in b), c), d) or e) occurs, the City may terminate this Agreement upon 30 business days' written notice.

Such termination shall be without prejudice to any other legal or equitable remedy otherwise available to the City upon such breach or failure.

11.3 DC not Remediating

If the City has provided the DC with an opportunity to remedy the Event of Default pursuant to section 11.2, and:

- a) The DC does not remedy the Event of Default within the Notice Period;
- b) It becomes apparent to the City that the DC cannot completely remedy the Event of Default within the Notice Period; or
- c) The DC is not proceeding to remedy the Event of Default in a way that is satisfactory to the City,

The City may extend the Notice Period, or initiate any one or more of the actions provided for in section 11.

11.4 Termination for convenience

Either party may terminate this Agreement at any time upon giving at least one hundred and twenty (120) days written notice to the other party without reason or cause and without liability, cost or penalty.

12. Notices

Where in this agreement any notice, request, direction or other communication is required to be given by either party, it shall be in writing and is effective if delivered in person, sent by ordinary or registered mail or e-mail, addressed to the other party for whom it is intended at the following addresses, and any notice shall be deemed to have been given:

- a) If delivered personally, on the date of such delivery;
- b) If by ordinary mail, on the 5th business day following the date of mailing;
- c) If by registered mail, on the day the postal receipt is acknowledged by the other party; and
- d) If by e-mail, when transmitted (if received before 4:30 p.m. local time at the recipient's office or failing which the next business day).

In this agreement the term "business day" means Monday through Friday excluding any City recognized statutory holiday.

Any notices intended for the City shall be delivered addressed to:

The Corporation of the City of North Bay
 200 McIntyre Street East
 PO Box 360
 North Bay, ON., P1B 8H8 Canada

Attention: City Clerk
 E-mail: Karen.McIsaac@cityofnorthbay.ca

Any notices intended for the DC shall be delivered addressed to:

Invest North Bay Development Corporation

200 McIntyre Street East
PO Box 360
North Bay, ON., P1B 8H8 Canada

Attention: Chair – Invest North Bay
E-mail: chair@investnorthbay.ca

13. Waiver of Breaches

In the event of a breach of any provision in this agreement by one party, no action or failure to act by the other party shall constitute a waiver of any right or duty afforded by that party under this agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in such breach, except as may be specifically agreed to in writing by the party that is not in breach.

14. No Partnership

Nothing in this agreement shall be read or construed as creating any agency, employment relationship, partnership, principal-agent, or other joint venture between the parties.

15. No Assignment

The DC will not assign this agreement, or any part thereof, without the prior written approval of the City, which approval may be withheld by the City in its sole discretion or may be given subject to such terms and conditions as the City may impose.

16. Entire Agreement

This Agreement embodies the entire agreement and supersedes any other understanding or agreement, collateral, oral or otherwise, existing between the parties at the date of execution.

17. Interpretation

This agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and Federal laws of Canada as applicable.

18. Successors

This agreement shall inure to the benefit of and be binding upon the parties, their respective successors and permitted assigns.

19. Severability of Provisions

If any of the provisions of this agreement are to be found illegal or invalid, such illegality or invalidity shall not render the whole agreement illegal or invalid, but the agreement shall be construed as if it did not contain the illegal or invalid provision(s), and the rights and obligations of the parties shall be construed and enforced accordingly.

20. No Amendment

This agreement may only be changed or amended in writing dually executed by the duly authorized representatives of both parties.

21. Force Majeure

21.1 Force Majeure means an event that:

- a) is beyond the reasonable control of a party; and
- b) makes a party's performance of its obligations under the agreement impossible, or so impracticable as reasonably to be considered impossible in the circumstances.

21.2 Force Majeure includes:

- a) infectious diseases, war, riots and civil disorder;
- b) storm, flood, earthquake and other severely adverse weather conditions;
- c) lawful act by a public authority; and
- d) strikes, lockouts and other labour actions.

If such events meet the test set out in section 21.1

21.3 Force Majeure shall not include:

- a) any event that is caused by the negligence or intentional action of a party or such party's agents or employees; or

b) any event that a diligent party could reasonably have been expected to:

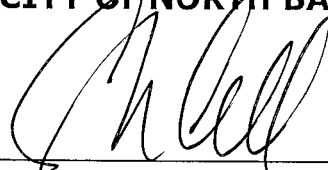
- (i) take into account at the time of the execution of the agreement; and
- (ii) avoid or overcome in the carrying out of its obligations under the agreement.

21.4 Failure to Fulfill Obligations

The failure of either party to fulfill any of its obligations under the agreement shall not be considered to be a breach of, or Event of Default under, the agreement to the extent that such failure to fulfill the obligation arose from an event of Force Majeure, if the party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the terms and conditions of the agreement.

IN WITNESS WHEREOF the parties hereto sign by their duly authorized signing officers.

**THE CORPORATION OF THE
CITY OF NORTH BAY**



Mayor Allan McDonald



City Clerk Karen McIsaac

**INVEST NORTH BAY
DEVELOPMENT CORPORATION**



Name: George Burton

Position: Chair

I have the authority to bind the Corporation