

THE CORPORATION OF THE CITY OF NORTH BAY

BY-LAW NO. 2000-93

**BEING A BY-LAW TO ADOPT SHAREHOLDER
DECLARATIONS AND A TRANSFER BY-LAW
FOR THE BUSINESS ACTIVITIES CURRENTLY
CARRIED ON BY THE HYDRO-ELECTRIC
COMMISSION OF THE CITY OF NORTH BAY
(NORTH BAY HYDRO) FOR NORTH BAY
POWER DISTRIBUTION LIMITED AND NORTH
BAY POWER HOLDINGS LIMITED**

WHEREAS Section 142 of the *Electricity Act, 1998* (“Electricity Act”) requires that any municipal corporation that distributes or retails electricity must cause a corporation to be incorporated under the *Business Corporations Act (Ontario)* (“OBCA”);

AND WHEREAS pursuant to subsection 142(2) of the Electricity Act, the Corporation of the City of North Bay (the “City of North Bay”) has incorporated North Bay Power [Distribution] Limited (the “Distribution Company”) and the Holding Company (collectively, the “Corporations”) under the OBCA for the purpose of carrying on the distribution and retailing of electricity, telecommunications services and other associated business activities currently carried on by The Hydro-Electric Commission of the City of North Bay (“North Bay Hydro”);

AND WHEREAS the City of North Bay is the owner of all of the issued and outstanding shares of the Holding Company;

AND WHEREAS the Holding Company is the owner of all of the issued and outstanding shares of the Distribution Company;

AND WHEREAS subsection 108(3) of the OBCA permits the beneficial owner of all of the issued shares of a corporation to make a written declaration that restricts in whole or in part the powers of the directors to manage or supervise the management of the business and affairs of a corporation;

NOW, THEREFORE, THE COUNCIL OF THE CORPORATION OF THE CITY OF NORTH BAY HEREBY ENACTS AS FOLLOWS:

1. The Shareholder Declaration for North Bay Power Holdings Limited attached as Schedule “A” hereto is hereby adopted.
2. The Shareholder Declaration for North Bay Power Distribution Limited attached as Schedule “B” hereto is hereby adopted.
3. The Transfer By-Law attached as Schedule “C” hereto is hereby adopted.

4. This By-law comes into force and effect as of November 1, 2000.

READ A FIRST TIME IN OPEN COUNCIL THIS 21ST DAY OF AUGUST, 2000.

READ A SECOND TIME IN OPEN COUNCIL THIS 23RD DAY OF OCTOBER, 2000.

READ A THIRD TIME IN OPEN COUNCIL AND PASSED THIS 23RD DAY OF OCTOBER, 2000.



MAYOR



CITY CLERK

THE CORPORATION OF THE CITY OF NORTH BAY

**SHAREHOLDER DECLARATION
RELATING TO NORTH BAY HYDRO HOLDINGS LIMITED**

cd

November 1, 2000

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SHAREHOLDER DECLARATION

SHAREHOLDER DECLARATION made as of the 1st day of November, 2000

BY:

THE CORPORATION OF THE CITY OF NORTH BAY, a municipal corporation incorporated pursuant to the *Municipal Act* (Ontario) (in its capacity as shareholder of the Corporation (as hereinafter defined),

(hereinafter referred to as the "Shareholder" or "the City")

RE: NORTH BAY HYDRO HOLDINGS LIMITED, a corporation incorporated pursuant to the *Business Corporations Act* (Ontario)

(hereinafter referred to as the "Holding Company")

WHEREAS Section 142 of the *Electricity Act, 1998* ("Electricity Act") requires that any municipal corporation that generates, transmits, distributes or retails electricity must cause a corporation to be incorporated under the *Business Corporations Act* (Ontario) ("OBCA");

AND WHEREAS pursuant to subsection 142(2) of the Electricity Act, the Corporation of the City of North Bay (the "City of North Bay") has incorporated North Bay Hydro Distribution Limited (the "Distribution Company") and the Holding Company (collectively, the "Corporations") under the OBCA for the purpose of carrying on the generation, transmission, distribution, and retailing of electricity, telecommunications services and other associated business activities currently carried on by The Hydro-Electric Commission of the City of North Bay ("North Bay Hydro");

AND WHEREAS the City of North Bay is the owner of all of the issued and outstanding shares of the Holding Company;

AND WHEREAS the Holding Company is the owner of all of the issued and outstanding shares of the Distribution Company, as permitted by Ontario Regulation 516/99;

AND WHEREAS subsection 108(3) of the OBCA permits the beneficial owner of all of the issued shares of a corporation to make a written declaration that restricts in whole or in part the powers of the directors to manage or supervise the management of the business and affairs of a corporation;

AND WHEREAS the Holding Company has entered into, concurrently with the entering into of the Shareholder of this Shareholder Declaration, a shareholder declaration with the Distribution Company (the "Distribution Company Declaration") restricting certain of the powers of the board of directors of such corporation to manage the business and affairs of the corporation and assuming such powers as set out in such Declaration;

AND WHEREAS the businesses of the Distribution Company is integral to the well being and infrastructure of the City of North Bay and, as such, it has been determined that it would be in the best interests of the City of North Bay to assume decision making authority with respect to the management of the Holding Company directly and the Distribution Company, indirectly, in the manner set out herein;

AND WHEREAS the Shareholder has entered into this Shareholder Declaration with the intent that it shall be deemed pursuant to subsection 108(3) of the OBCA to be a unanimous shareholder agreement for the purpose of restricting the powers of the board of directors of the Holding Company (the "Holding Company Board") to manage or supervise the management of the business and affairs of the Holding Company directly as specifically set out herein and the Distribution Company, indirectly, by restricting the powers of the Holding Company Board to manage the business and affairs of such company and assuming such powers in the same manner and to the same extent as set forth in the Distribution Company Declaration;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, the parties hereto hereby agree as follows:

**ARTICLE 1
INTERPRETATION**

1.1 DEFINITIONS:

In this Declaration, the following terms will have the meanings set out below:

“**body corporate**” means a firm, partnership, unincorporated association, joint venture, body corporate, corporation, bank, trust, pension fund, union, governmental agency, board, tribunal, ministry or commission or other legal entity of any kind whatsoever, but excludes an individual or natural person;

“**Business**” means the business formerly carried on by North Bay Hydro and now carried on by the Distribution Company;

“**Chair**” means the director of the Distribution Company appointed as Chair of the Distribution Company Board by the Distribution Company Board upon the nomination by the Shareholder from time to time;

“**Corporations**” has the meaning given to it in the recitals and “**Corporation**” shall mean any of such Corporations;

“**distribute**” means to convey electricity at voltages of 50 kilovolts or less, and “**distributing**” and “**distribution**” have corresponding meanings;

“**Distribution Company**” has the meaning given to it in the recitals;

“**Distribution Company Board**” means the board of directors of the Distribution Company;

“**Distribution Company Declaration**” has the meaning given to it in the recitals;

“**Financial Statements**” means, for any particular period, audited or unaudited (as stipulated in this Declaration), consolidated or unconsolidated (as stipulated in this Declaration), comparative financial statements of the Holding Company consisting of not less than a balance sheet, a statement of income and retained earnings, a statement of changes in financial position, a report or opinion of the Auditor (in the case of audited Financial Statements) and such other statement, reports, notes and information prepared in accordance with generally accepted accounting principles (consistently applied) and as are required in accordance with any applicable law;

“**OBCA**” means the *Business Corporations Act* (Ontario), as such statute may be amended or re-enacted from time to time;

“**person**” means an individual, a natural person or a body corporate;

“**Regulator**” means the Ontario Energy Board, the Independent Electricity Market Operator and each other governmental or regulatory authority having jurisdiction over the Holding Company; and

“**Regulation**” means the *Electricity Act, 1998* and the *Ontario Energy Board Act, 1998* and all codes, guidelines, orders and regulations pursuant or in relation thereto.

“**sustaining profit**” means that level of return on equity (income after payment of taxes in lieu) which will generate sufficient net income to ensure that the utility is able to meet all cash flow requirements for capital expenditures, depreciation, operating expenses, debt servicing, system expansion and re-investment, but does not generate sufficient surplus funds that could be disbursed to the shareholder in the form of a dividend.

1.2 REGULATORY MATTERS:

In the event of any conflict between any approval or direction or other requirement of the Shareholder under this Declaration and any decision, order or policy of any Regulator, the decision, order or policy of the Regulator shall govern and the applicable Corporation will at all times comply with any decision, order or policy of the Regulator whether or not

an approval or direction has first been given in respect thereof by the Shareholder under this Declaration. No Corporation will seek any order from any Regulator for any matter that would require the approval of the Shareholder under this Declaration without first giving notice of its intention to seek such an order to the Shareholder.

1.3 OTHER ASSISTANCE:

The parties hereto shall sign such further and other papers, cause such meetings to be held, votes cast, special resolutions and resolutions passed, by-laws enacted and documents executed, and do and perform and cause to be done and performed such further and other acts and things as may be necessary or desirable to give full effect to the terms of this Declaration.

1.4 APPLICABLE LAW:

This Declaration shall be construed and enforced in accordance with the laws of the Province of Ontario and the applicable laws of Canada.

1.5 SUCCESSORS AND ASSIGNS:

This Declaration shall enure to the benefit of and be binding on the parties to this Declaration, all future shareholders of the Corporation and all persons who may hereafter be elected or appointed directors of the Corporation, and their respective heirs, executors, administrators, successors and assigns.

**ARTICLE 2
POWERS OF DIRECTORS**

2.1 RESTRICTION ON POWERS OF HOLDING COMPANY BOARD:

- (a) The rights, powers and duties of the Holding Company Board and all other persons who may hereafter be elected or appointed as directors of the Holding Company to manage or supervise the management of the business and affairs of the Holding Company, whether such rights, powers or duties under the Act, the articles or by-laws of the Holding Company, or otherwise, are hereby restricted in the manner and to the extent specifically set out herein.
- (b) The Holding Company Board and all other persons who may hereafter be elected or appointed as directors of the Holding Company are hereby relieved of the rights, powers, duties, obligations and liabilities imposed on them as directors of the Holding Company whether arising under the Act or otherwise in the manner and to the extent specifically set out herein.
- (c) The Shareholder hereby assumes the rights, powers, duties, obligations and liabilities of the Holding Company Board, and of all other persons who may hereafter be elected or appointed as directors of the Holding Company, whether arising under the act or otherwise, in the manner and to the extent specifically set out herein.

**ARTICLE 3
OBJECTIVES AND PRINCIPLES**

3.1 PURPOSES:

The purposes of this Declaration are as follows:

- (a) to restrict, to the extent and in the manner specifically set out herein, the Holding Company Board's authority to manage or supervise the management of the business and affairs of the Holding Company, directly, and the Distribution Company, indirectly, and to provide the Shareholder with the power to make decisions regarding those matters as to which it considers fundamental to the Business and in the best interests of the City of North Bay;
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- (b) to inform the residents of the City of North Bay of the Shareholder's fundamental principles regarding the Business; and
- (c) to set out the accountability, responsibility and relationship between the Holding Company Board and the Shareholder, directly and the Distribution Company Board, indirectly.

3.2 SHAREHOLDER OBJECTIVES: HOLDING COMPANY

The Shareholder's objectives in managing the business and affairs of the Holding Company directly, and the Distribution Company, indirectly, are to ensure that:

- (1) The Holding Company shall:
 - (a) make such decisions as are required to exercise long term policy directions for the Business in the interests of the Shareholder,
 - (b) subject to applicable law be restricted to the net income or proceeds of any new affiliate companies of the Holding Company, and not from the Distribution Company; and
 - (c) maintain or increase the value of the Holding Company by the Distribution Company being operated on a sustaining profit basis and by the consideration of new businesses to be operated as affiliates of the Holding Company, with the proceeds of any such business being returned to the Shareholder;
 - (d) the City reserves the right of each successive council during its term (preferably during the first year thereof) to review the sustaining profit return of the Distribution Company and the powers and makeup of the Holding Company Board.
- (2) The Distribution Company shall make such decisions as are necessary to operate the Distribution Company on a sustaining profit basis, where the Shareholder requires a sustaining profit model for the Distribution Company, under which
 - (a) there is a sufficient return to maintain the value of the utility assets and the viability of the utility;
 - (b) the City will not require any shareholder dividend;
 - (c) any operating surplus is sufficient to recover the depreciation of assets and to pay any taxes that may be assessed, and that any operating surplus balance is applied to distribution purposes only;
 - (d) any operating surplus balance should not exceed the average of such surplus over the previous three years (on a rolling average basis); and, for greater certainty, any operating surplus balance should not create Year-end Working Capital that is in excess of the average of such surplus over the previous three years (on a rolling average basis) expressed as a percentage of Net Expenses;

and the Holding Company Board will manage the Holding Company on the basis of such objectives.

3.3 BUSINESS OF THE HOLDING COMPANY:

- (A) BUSINESS OF THE HOLDING COMPANY:
The Holding Company may engage only in the business activities permitted by and only in accordance therewith, the Regulation to be carried on by it, being as at the date hereof, the following business activities:
 - (a) transmitting or distributing electricity;

- (b) owning and/or operating an electricity generation facility;
- (c) distributing or servicing gas or any other energy product which is carried through pipes or wires to the user;
- (d) business activities that enhance or develop the ability of the Corporation to carry on any of the activities described in paragraphs (a), (b) or (c) above;
- (e) business activities the principal purpose of which is to use more effectively the assets of the Corporation or any Subsidiary, as applicable, including providing meter installation and reading services, providing billing services and business activities in the telecommunications area;
- (f) renting, selling or maintaining equipment and appliances, including without limitation, hot water heaters;
- (g) managing or operating, on behalf of a Shareholder, the provision of a public utility as defined in Section 1 of the *Public Utilities Act* (Ontario) or sewage services; and
- (h) providing services related to improving energy efficiency.

**ARTICLE 4
BUSINESS OF THE DISTRIBUTION COMPANY**

4.1 SHAREHOLDER OBJECTIVES: DISTRIBUTION COMPANY

The following principles will govern the operations of the Distribution Company:

- (a) The Business is integral to the well-being and the infrastructure of the City of North Bay. The Holding Company recognizes that it is in the best interests of the Corporations and the community of customers and residents of the City of North Bay whom the Business affects, that the Distribution Company conducts its affairs:
 - (A) on a commercially prudent and sustaining profit basis;
 - (B) in a manner consistent with the policies established by the Shareholder from time to time; and
 - (C) in accordance with the financial performance objectives of the Shareholder as set out herein.
- (b) The Distribution Company will provide a reliable, effective and efficient electricity distribution system.
- (c) Distribution rates applicable to customers of the Distribution Company will be set by the Distribution Company Board and the rules of the Ontario Energy Board from time to time.
- (d) The Business is at all times subject to such licences, codes, policies, rules, orders, interim orders, approvals, consents and other actions of any Regulator.
- (e) The Distribution Company will provide its services regarding customer satisfaction, energy conservation and environmental responsibility.
- (f) The Board is responsible for causing the Distribution Company to conduct its affairs in accordance with the same.

4.2 BUSINESS OF THE DISTRIBUTION COMPANY:

The Distribution Company may engage only in the business activities permitted by and only in accordance therewith, the Regulation to be carried on by it, being as at the date hereof, the following business activities:

- (a) distributing electricity;
- (b) distributing (i) directly, (ii) through a subsidiary, (iii) through a third party, or (iv) through a combination of the foregoing, electricity to every person connected to the distribution system of the Distribution Company;
- (c) business activities, the principal purpose of which is to use more effectively the assets of the distribution system of the Distribution Company, including, without limiting the generality of the foregoing:
 - (i) meter reading services;
 - (ii) billing and collection services;
 - (iii) tree trimming services for the purpose of line maintenance;
 - (iv) repair and maintenance for the distribution lines and facilities;
 - (v) construction of distribution lines and facilities;
 - (vi) general administrative support services;
 - (vii) telecommunications services for electricity distribution; and
 - (viii) activities that are essential to enable the conveyance of electricity;
- (d) using the real property that the Distribution Company has the right to use for the purpose of providing telecommunications services, or entering into agreements with any third party, including subsidiaries, authorizing such third party or subsidiaries to use such real property for the purpose of providing telecommunications services;
- (e) until such time as Section 71 of the *Ontario Energy Board Act* is proclaimed in force, or as otherwise advised by the Holding Company (i) street lighting services; (ii) renting or selling of hot water heaters; (iii) renting of sentinel lights; and (iv) fibre optic cable distribution.

ARTICLE 5 BOARD OF DIRECTORS

5.1 APPOINTMENT OF BOARDS:

- (a) **Holding Company Board** – The Shareholder shall appoint the members of the Holding Company Board and the Holding Company Board shall consist of every member of City Council, and the Chair and Vice-Chair of the Distribution Company Board, all positions being held *ex officio*;
- (b) **Distribution Company Board** – The Holding Company shall appoint the members of the Distribution Company Board, as nominated by the City and the powers of the Holding Company Board to elect the directors to such board on behalf of the Holding Company is hereby restricted.

5.2 BOARD RESPONSIBILITIES:

- (a) **Holding Company Board** – Subject to any matters requiring approval of the Shareholder pursuant to this Declaration, the Holding Company Board shall supervise the management of the business and affairs of the Holding Company, and shall allow the Chief Executive officer of the Distribution Company to attend and participate in, but not vote at meetings of the Board of the Holding Company.
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- (b) **Distribution Company Board** – Subject to any matters requiring approval of the Shareholder pursuant to this Declaration, the Distribution Company Board will supervise the management of the business and affairs of the Distribution Company, including the following specific matters:
- (i) Financial Structure - the Distribution Company Board shall establish policies to develop and maintain a prudent financial and capitalization structure for the corporation consistent with the industry's norm and sound financial principles on the basis that the Distribution Company is intended to be self-financing; and
 - (ii) Financial Return - the Distribution Company Board shall establish policies to provide the City of North Bay (as indirect shareholder of the Corporation) with a sustaining profit return on the Business
 - (iii) allow the Chief Executive Officer of the Holding Company to attend and participate in, but not vote at meetings of the Board of the Distribution Company.

5.3 QUALIFICATIONS OF DIRECTORS:

In electing directors to the Holding Company Board and the Distribution Company Board, the Shareholder will give due regard to the qualifications of candidates including:

- (a) experience or knowledge with respect to:
 - (i) public utility commissions or board of major corporations or other commercial enterprises;
 - (ii) corporate finance;
 - (iii) corporate governance;
 - (iv) market development;
 - (v) large system operation and management;
 - (vi) urban energy industries;
 - (vii) public policy issues and laws relating to the Holding Company and the electricity industry; and
 - (viii) environmental matters, labour relations and occupational health and safety issues;
- (b) commercial sensitivity and acumen;
- (c) independence of judgment; and
- (d) personal integrity.

5.4 TERM:

- (a) **Initial Term:**
Subject to subsection (c) and (d) below, the initial term of office for a director of the Holding Company Board and the Distribution Company Board shall be either one, two or three years, as chosen by the Shareholder, in order to stagger the time at which new directors shall be appointed.
 - (b) **Subsequent Term:**
Subject to subsection (c) below, the term of office of each director of the Holding Company Board and the Distribution Company Board shall, subsequent to the initial term, be three years.
 - (c) **Inside Directors:**
A director who is a member of the Municipal Council of the City of North Bay ("Council") may only be a director while serving as a member of Council. A director who is a Chief Executive Officer of the Distribution Company may only be a director while such person retains the position of Chief Executive Officer.
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(d) **Revocation:**

Council reserves the right to revoke the appointment of any Director of the Distribution Company at any time, without notice.

5.4 REMUNERATION:

- (a) Holding Company – The members of the Holding Company Board shall receive no remuneration.
- (b) Distribution Company - The remuneration of the members of the Distribution Company Board for their respective services as directors will be as determined by the Shareholder from time to time. Initially, each director of the Distribution Company will be paid \$5,000.00 per annum for his or her services. Notwithstanding the foregoing:
 - (i) members of the Distribution Company Board who are members of Council or the Chief Executive Officer of the Distribution Company will receive no remuneration as a Director; and
 - (ii) the Chair will be paid a total of \$6,000.00 per annum and the Vice Chair shall be paid a total of \$5,500.00 per annum.

**ARTICLE 6
SHAREHOLDER MATTERS**

6.1 DECISIONS OF THE SHAREHOLDER:

The following will apply to any approvals or decisions that the Shareholder must provide:

- (a) all approvals and decisions will be made in writing signed by the authorized signatory of the Shareholder; and
- (b) no approval will be given until such time as the Holding Company or the Distribution Company, as the case may be, has given reasonable advance notice in writing to the Shareholder of the need for approval and has provided such information as is reasonably necessary for the Shareholder to make an informed decision regarding the subject matter requiring approval.

6.2 MATTERS REQUIRING SHAREHOLDER APPROVAL UNDER THE OBCA:

- (a) Holding Company - In accordance with the provisions of the OBCA, the Holding Company will not, without the approval of the Shareholder:
 - (i) change the name of the Holding Company;
 - (ii) add, change or remove any restriction upon the business or businesses that it may carry on or upon the powers that it may exercise;
 - (iii) add, change or remove any shares it is authorized to issue or any maximum consideration for which any shares of the Holding Company are authorized to be issued;
 - (iv) create new classes of shares;
 - (v) change the designation of all or any of its shares, and add, change or remove any rights, privileges, restrictions and conditions, including rights to accrued dividends, in respect of all or any of its shares, whether issued or unissued;
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- (vi) change the shares of any class or series, whether issued or unissued, into a different number of shares of the same class or series or into the same or a different number of shares of other classes or series;
 - (vii) divide a class of shares, whether issued or unissued, into series and fix the number of shares in each series and the rights, privileges, restrictions and conditions thereof;
 - (viii) authorize the directors to divide any class of unissued shares into series and fix the number of shares in each series and the rights, privileges, restrictions and conditions thereof;
 - (ix) authorize the directors to change the rights, privileges, restrictions and conditions attached to unissued shares of any series;
 - (x) revoke, diminish or enlarge any authority conferred under clauses (viii) and (ix);
 - (xi) increase or decrease the number, or minimum or maximum number, of directors; and
 - (xii) add, change or remove restrictions on the issue, transfer or ownership of shares of any class or series.
- (b) Distribution Company – Neither the Holding Company nor the Distribution Company will approve the matters set out in Section 6.2(a) above in relation to the Distribution Company without the approval of the Holding Company Board, and its powers are hereby restricted and assumed by the Shareholder.

6.3 OTHER MATTERS REQUIRING SHAREHOLDER APPROVAL:

- (a) Shareholder Approvals Regarding the Distribution Company – Without the approval of the Holding Company the Distribution Company shall not (and the power of the Holding Company Board to approve such matters as provided to it in the Distribution Company Declaration, as shareholder of the Distribution Company, is hereby restricted and assumed by the Shareholder):
 - (i) Expenditures – incur expenditures beyond those required to maintain the integrity of the existing distribution system and accommodate normal expansion within City of North Bay borders in an amount in excess of \$2,000,000.00 per project;
 - (ii) Acquisitions – purchase any assets of a business or shares of a business;
 - (iii) Sales – sell any distribution assets except in the normal course of business;
 - (iv) Capital – issue, redeem or purchase any shares or convertible shares of the corporation or make any other change in the issued capital;
 - (v) Capital Contribution – establish any requirement for capital contribution to the corporation from the Shareholder;
 - (vi) Financial Obligations – take on or assume any financial obligation which would increase the debt/equity ratio of the corporation on a consolidated basis above the ratio of 50:50;
 - (vii) Tax, Regulatory Matters – make any decision which would adversely affect the tax or regulatory status of the corporation in a material way; and
 - (viii) Real Estate – sell or otherwise dispose of any real estate assets, (excluding only distribution line easements which are no longer necessary for the

distribution system), without the consent of the Shareholder to the sale and the application of the proceeds of such sale.

- (b) Distribution Rates – In setting the distribution rates charged to customers, the Distribution Company shall ensure that reasonable distribution rates are established which:
 - (i) recognize the sustaining profit required to maintain the value of the assets and the viability of the Business and as may be permitted by the Ontario Energy Board; and
 - (ii) based upon such other factors which the Shareholder shall determine to be reasonable during the term of each Council, and preferably during the first year of each such term.

ARTICLE 7 REPORTING

7.1 BUSINESS PLAN:

Not later than 60 days prior to the end of each fiscal year, the Distribution Company Board will approve and submit to the Holding Company Board, a business plan for the next five fiscal years (the "Business Plan").

The Business Plan will be prepared on a consistent basis with the Business Plan then in effect. The Distribution Company will carry on its business and operations in accordance with the Business Plan which will include, in respect of the period covered by such plan:

- (a) the strategic direction and any new business initiatives which the Distribution Company will undertake or recommend to the Holding Company;
- (b) an operating and capital expenditure budget for the next fiscal year and an operating and capital expenditure projection for each fiscal year thereafter, including the resources necessary to implement the draft business plan;
- (c) the projected annual revenues and profits for each fiscal year for the Distribution Company and each of the affiliate subsidiaries;
- (d) pro forma consolidated and unconsolidated financial statements;
- (e) an acquisition budget setting forth the nature and type of capital expenditures proposed to be made in the following fiscal year, supported by explanations, notes and information upon which the budget was based;
- (f) environmental plans;
- (g) any material variances in the projected ability of any business activity to meet or continue to meet the financial objectives of the Shareholder as noted herein; and
- (h) any material variances from the Business Plan then in effect.

7.2 SEMI-ANNUAL REPORTS:

Within 45 days after the end of each half of the fiscal year, the Distribution Company Board will prepare (on a consistent basis with the previous fiscal period) and submit to the Holding Company a semi-annual report. The semi-annual report will include, in respect of the immediately precedent fiscal period:

- (a) quarterly unaudited consolidated and unconsolidated Financial Statements;

- (b) such explanations, notes and information as is required to explain and account for any variances between the actual results from operations and the budgeted amounts set forth in the current Business Plan, including any material variances in the projected ability of any business activity to meet or continue to meet the financial objectives of the Shareholder as noted herein;
- (c) information that is likely to materially affect the Shareholder's financial objectives or energy policies;
- (d) information that is likely to materially affect customers' perceptions or opinions regarding the Holding Company;
- (e) information regarding any matter, occurrence or other event which is a material breach or violation of any law; and
- (f) any such additional information as the Shareholder may specify from time to time.

7.3 ACCESS TO RECORDS:

The duly appointed representatives of the Holding Company and the Shareholder (as approved from time to time) shall have unrestricted access to the books and records of the Corporations during normal business hours. Such representatives shall treat all information of the Corporations with the same level of care and confidentiality as any confidential information of the Shareholder.

7.4 AUDIT:

The Distribution Company and the Holding Company's consolidated and unconsolidated Financial Statements will be audited annually by the same auditor as approved by the Shareholder. The first auditor of the Corporations is KPMG Chartered Accountants, (the "Auditor").

7.5 ACCOUNTING:

The Corporations will, in consultation with the Auditor, adopt and use the accounting policies and procedures which may be approved by the Holding Company Board from time to time and all such policies and procedures will be in accordance with generally accepted accounting principles and applicable regulatory requirements.

7.6 ANNUAL FINANCIAL STATEMENTS:

The Board will cause the Auditor to deliver, as soon as practicable and in any event within 90 days after the end of each fiscal year, the audited consolidated Financial Statements of the Holding Company for consideration by the Shareholder.

ARTICLE 8 MISCELLANEOUS

8.1 CONFLICT OF INTEREST POLICY:

The directors and officers of the Distribution Company and the Holding Company will abide by the requirements of the OBCA and the Holding Company's articles and by-laws in respect of conflicts of interest, including any requirements in respect of disclosure and abstention from voting.

8.2 CONFIDENTIALITY:

The Shareholder and the directors and officers of the Holding Company and the Distribution Company (each a "Receiving Party") will ensure that no confidential

information of the Shareholder or the Holding Company or the Distribution Company is disclosed or otherwise made available to any person, except to the extent that:

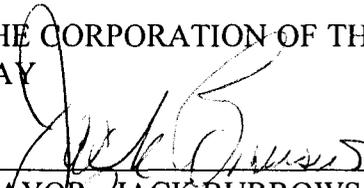
- (a) disclosure to a Receiving Party's employees or agents is necessary for the performance of any Receiving Party's duties and obligations under this Declaration;
- (b) disclosure is required in the course of judicial proceedings or pursuant to law; or
- (c) the confidential information becomes part of the public domain (other than through unauthorized disclosure by the Receiving Party).

8.3 AMENDMENTS:

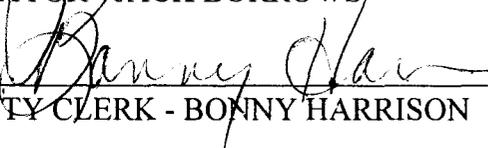
This Declaration may be amended solely at the discretion of the Shareholder. The Shareholder will consult with the Holding Company Board and will then provide 10 days prior written notice to the Holding Company Board of any proposed amendments to this Declaration.

DATED at North Bay this 1st day of November, 2000.

THE CORPORATION OF THE CITY OF NORTH
BAY



MAYOR - JACK BURROWS



CITY CLERK - BONNY HARRISON

NORTH BAY HYDRO HOLDINGS LIMITED

SHAREHOLDER DECLARATION
RELATING TO NORTH BAY HYDRO DISTRIBUTION LIMITED

November 1, 2000

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SHAREHOLDER DECLARATION

SHAREHOLDER DECLARATION made as of the 1st day of November, 2000

BY:

THE CORPORATION OF THE CITY OF NORTH BAY (the “ City” herein)

and

NORTH BAY HYDRO HOLDINGS LIMITED

(hereinafter referred to as the “Shareholder”)

RE: NORTH BAY HYDRO DISTRIBUTION LIMITED, a corporation
incorporated pursuant to the *Business Corporations Act* (Ontario)

(hereinafter referred to as the “Corporation”)

WHEREAS Section 142 of the *Electricity Act, 1998* (“Electricity Act”) requires that any municipal corporation that generates, transmits, distributes or retails electricity must cause a corporation to be incorporated under the *Business Corporations Act* (Ontario) (“OBCA”);

AND WHEREAS pursuant to subsection 142(2) of the Electricity Act, the Corporation of the City of North Bay (the “City of North Bay”) has incorporated the Corporation and North Bay Hydro Holdings Limited under the OBCA for the purpose of carrying on the distribution, and retailing of electricity, telecommunications services and other associated business activities currently carried on by The Hydro-Electric Commission of the City of North Bay (“North Bay Hydro”);

AND WHEREAS the Shareholder is the owner of all of the issued and outstanding shares of the Corporation and the City is making this Declaration as the owner of all the shares of the Shareholder, and in support of the City’s Shareholder Declaration for the Holding Company;

AND WHEREAS subsection 108(3) of the OBCA permits the beneficial owner of all of the issued shares of a corporation to make a written declaration that restricts in whole or in part the powers of the directors to manage or supervise the management of the business and affairs of a corporation;

AND WHEREAS the Shareholder has entered into this Shareholder Declaration with the intent that it shall be deemed pursuant to subsection 108(3) of the OBCA to be a unanimous shareholder agreement for the purpose of restricting the powers of the board of directors of the Corporation (the “Board) to manage or supervise the management of the business and affairs of the Corporation as specifically set out herein;

AND WHEREAS the City of North Bay, as sole shareholder of the Shareholder, will enter into, concurrently with the Shareholder entering into this Shareholder Declaration, a shareholder declaration (the “City of North Bay Shareholder Declaration”) with the Shareholder restricting the powers of the directors of the Shareholder to manage or supervise the management of the business and affairs of the Shareholder and assuming such powers, in the same manner and to the same extent that the powers of the Board are restricted and assumed by the Shareholder pursuant to this Shareholder Declaration;

NOW THEREFORE, in consideration of the premises and of the mutual covenants herein contained, the parties hereto hereby agree as follows:

ARTICLE 1 INTERPRETATION

1.1 DEFINITIONS

In this Declaration, the following terms will have the meanings set out below:

“**Board**” has the meaning given to it in the recitals;

“**body corporate**” means a firm, partnership, unincorporated association, joint venture, body corporate, corporation, bank, trust, pension fund, union, governmental agency, board, tribunal, ministry or commission or other legal entity of any kind whatsoever, but excludes an individual or natural person;

“**Business**” means the electricity distribution business and all activities permitted by the Regulation to be carried on in connection therewith, as formerly carried on by North Bay Hydro and now carried on by the Corporation;

“**City of North Bay Shareholder Declaration**” has the meaning given to it in the recitals;

“**distribute**” means to convey electricity at voltages of 50 kilovolts or less, and “**distributing**” and “**distribution**” have corresponding meanings;

“**Financial Statements**” means, for any particular period, audited or unaudited (as the case may be), consolidated or unconsolidated (as the case may be), comparative financial statements of the Corporation consisting of not less than a balance sheet, a statement of income and retained earnings, a statement of changes in financial position, a report or opinion of the Auditor (in the case of audited Financial Statements) and such other statement, reports, notes and information prepared in accordance with generally accepted accounting principles (consistently applied) and as are required in accordance with any applicable law;

“**OBCA**” has the meaning given to it in the recitals;

“**person**” means an individual, a natural person or a body corporate;

“**Regulator**” means the Ontario Energy Board, the Independent Electricity Market Operator and each other governmental or regulatory authority having jurisdiction over the Corporation, as applicable in the circumstances;

“**Regulation**” means the *Electricity Act, 1998* and the *Ontario Energy Board Act, 1998* and all codes, guidelines, orders and regulations created pursuant or in relation thereto; and

“**subsidiary**” shall have the meaning given to it in the OBCA.

“**sustaining profit**” means that level of return on equity (income after payment of taxes in lieu) which will generate sufficient net income to ensure that the utility is able to meet all cash flow requirements for capital expenditures, depreciation, operating expenses, debt servicing, system expansion and re-investment, but does not generate sufficient surplus funds that could be disbursed to the shareholder in the form of a dividend.”

1.2 REGULATORY MATTERS:

In the event of any conflict between any approval or direction or other requirement of the Shareholder under this Declaration and any decision, order or policy of any Regulator, the decision, order or policy of the Regulator shall govern and the Shareholder and the Corporation will at all times comply with any decision, order or policy of the Regulator whether or not an approval or direction has first been given in respect thereof by the Shareholder under this Declaration. The Corporation will not seek any order from any Regulator for any matter that would require the approval of the Shareholder under this Declaration without first giving notice of its intention to seek such an order to the Shareholder.

1.3 OTHER ASSISTANCE:

The parties hereto shall sign such further and other papers, cause such meetings to be held, votes cast, special resolutions and resolutions passed, by-laws enacted and documents executed, and do and perform and cause to be done and performed such further and other acts and things as may be necessary or desirable to give full effect to the terms of this Declaration.

1.4 APPLICABLE LAW:

This Declaration shall be construed and enforced in accordance with the laws of the Province of Ontario and the applicable laws of Canada.

1.5 SUCCESSORS AND ASSIGNS:

This Declaration shall enure to the benefit of and be binding on the parties to this Declaration, all future shareholders of the Corporation and all persons who may hereafter be elected or appointed directors of the Corporation, and their respective heirs, executors, administrators, successors and assigns.

**ARTICLE 2
POWERS OF DIRECTORS**

2.1 RESTRICTION ON POWERS OF THE BOARD:

- (a) The rights, powers and duties of the Board and all other persons who may hereafter be elected or appointed as directors of the Corporation to manage or supervise the management of the business and affairs of the Corporation, whether such rights, powers or duties under the Act, the articles or by-laws of the Corporation, or otherwise, are hereby restricted in the manner and to the extent specifically set out herein.
- (b) The Board and all other persons who may hereafter be elected or appointed as directors of the Corporation are hereby relieved of the rights, powers, duties, obligations and liabilities imposed on them as directors of the Corporation whether arising under the Act or otherwise in the manner and to the extent specifically set out herein.
- (c) The Shareholder hereby assumes the rights, powers, duties, obligations and liabilities of the Board, and of all other persons who may hereafter be elected or appointed as directors of the Corporation, whether arising under the Act or otherwise, in the manner and to the extent specifically set out herein.

**ARTICLE 3
OBJECTIVES AND PRINCIPLES**

3.1 PURPOSES:

The purpose of this Declaration is to restrict, to the extent and in the manner specifically set out herein, the Board's authority to manage or supervise the management of the business and affairs of the Corporation, and to provide the Shareholder with the Hydro to make decisions regarding those matters as to which it has been advised that the City of North Bay considers fundamental to the Business and in the best interests of the City of North Bay so that the City of North Bay may, in turn, assume the Hydro to make decisions regarding such matters pursuant to the City of North Bay Shareholder Declaration.

3.2 SHAREHOLDER OBJECTIVES:

The Shareholder's objectives in managing the business and affairs of the Corporation as set forth herein are to ensure that:

- (a) The Business is integral to the well-being and the infrastructure of the City of North Bay. And it is in the best interests of the community of customers and
-

residents of the City of North Bay whom the Business affects, that the Distribution Company conducts its affairs;

- (A) on a commercially prudent and sustaining profit basis;
 - (B) in a manner consistent with the policies established by the Shareholder from time to time; and
 - (C) in accordance with the financial performance objectives of the Shareholder as set out herein.
- (b) The Distribution Company will provide a reliable, effective and efficient electricity distribution system.
- (c) Distribution rates applicable to customers of the Distribution Company will be set by the Distribution Company Board and according to the rules of the Ontario Energy Board from time to time.
- (d) The Business is at all times subject to such licences, codes, policies, rules, orders, interim orders, approvals, consents and other actions of any Regulator.
- (e) The Distribution Company will provide its services regarding customer satisfaction, energy conservation and environmental responsibility.
- (f) The Board is responsible for causing the Distribution Company to conduct its affairs in accordance with the same,

and the Board shall manage the Corporation on the basis of such objectives.

3.3 PRINCIPLES:

The following principles will govern the operations of the Corporation:

The Distribution Company shall make such decisions as are necessary to operate the Distribution Company on a sustaining profit basis, where the Shareholder requires a sustaining profit model for the Distribution Company, under which

- (a) there is a sufficient return to maintain the value of the utility assets and the viability of the utility;
- (b) the Shareholder will not require any shareholder dividend;
- (c) any operating surplus is sufficient to recover the depreciation of assets and to pay any taxes that may be assessed, and that any operating surplus balance is applied to distribution purposes only;

- (d) any operating surplus balance should not exceed the average of such surplus over the previous three years (on a rolling average basis); and, for greater certainty, any operating surplus balance should not create Year-end Working Capital that is in excess of the average of such surplus over the previous three years (on a rolling average basis) expressed as a percentage of Net Expenses.

**ARTICLE 4
BUSINESS OF THE CORPORATION**

4.1 BUSINESS OF THE CORPORATION:

The Corporation may engage only in the business activities in accordance with and permitted by the Regulation to be carried on by the Corporation, being, at the date hereof, the following business activities:

- (a) distributing electricity;
 - (b) distributing (i) directly, (ii) through a subsidiary, (iii) through a third party, or (iv) through a combination of the foregoing, electricity to every person connected to the distribution system of the Corporation;
 - (c) business activities, the principal purpose of which is to use more effectively the assets of the distribution system of the Corporation, including, without limiting the generality of the foregoing:
 - (i) meter reading services;
 - (ii) billing and collection services;
 - (iii) tree trimming services for the purpose of line maintenance;
 - (iv) repair and maintenance for the distribution lines and facilities;
 - (v) construction of distribution lines and facilities;
 - (vi) general administrative support services;
 - (vii) telecommunications services for electricity distribution; and
 - (viii) activities that are essential to enable the conveyance of electricity;
 - (d) using the real property that the Corporation has the right to use for the purpose of providing telecommunications services, or entering into agreements with any third party, including subsidiaries, authorizing such third party or subsidiaries to use such real property for the purpose of providing telecommunications services;
 - (e) until such time as Section 71 of the *Ontario Energy Board Act* is proclaimed in force, or as otherwise advised by the Shareholder, (i) street lighting services; (ii) renting or selling of hot water heaters; (iii) renting of sentinel lights; and (iv) fibre optic cable services.
-

**ARTICLE 5
BOARD OF DIRECTORS**

5.1 BOARD RESPONSIBILITIES:

Subject to any matters requiring approval of the Shareholder pursuant to this Declaration, the Board will supervise the management of the business and affairs of the Corporation, including the following specific matters:

- (i) Financial Structure - the Distribution Company Board shall establish policies to develop and maintain a prudent financial and capitalization structure for the corporation consistent with the industry's norm and sound financial principles on the basis that the Distribution Company is intended to be self-financing; and
- (ii) Financial Return - the Distribution Company Board shall establish policies to provide the City of North Bay (as indirect shareholder of the Corporation) with a sustaining profit return on the Business which maintains or increases the value of the utility
- (iii) give notice to and allow the Chief Executive Officer of the Holding Company to attend and participate in, but not vote at meetings of the Board of the Distribution Company.

**ARTICLE 6
SHAREHOLDERS MATTERS**

6.1 MATTERS REQUIRING SHAREHOLDER APPROVAL UNDER THE OBCA:

In accordance with the provisions of the OBCA, the Corporation will not, without the approval of the Shareholder:

- (a) change the name of the Corporation;
- (b) add, change or remove any restriction upon the business or businesses that the Corporation may carry on or upon the powers that the Corporation may exercise;
- (c) add, change or remove any shares that the Corporation is authorized to issue or any maximum consideration for which any shares of the Corporation are authorized to be issued;
- (d) create new classes of shares;

- (e) change the designation of all or any of its shares, and add, change or remove any rights, privileges, restrictions and conditions, including rights to accrued dividends, in respect of all or any of its shares, whether issued or unissued;
- (f) change the shares of any class or series, whether issued or unissued, into a different number of shares of the same class or series or into the same or a different number of shares of other classes or series;
- (g) divide a class of shares, whether issued or unissued, into series and fix the number of shares in each series and the rights, privileges, restrictions and conditions thereof;
- (h) authorize the directors to divide any class of unissued shares into series and fix the number of shares in each series and the rights, privileges, restrictions and conditions thereof;
- (i) authorize the directors to change the rights, privileges, restrictions and conditions attached to unissued shares of any series;
- (j) revoke, diminish or enlarge any authority conferred under clauses (h) and (i);
- (k) increase or decrease the number, or minimum or maximum number, of directors; and
- (l) add, change or remove restrictions on the issue, transfer or ownership of shares of any class or series.

6.2 OTHER MATTERS REQUIRING SHAREHOLDER APPROVAL:

- (a) Distribution Rates – In setting the distribution rates charged to customers, the Distribution Company shall ensure that reasonable distribution rates are established which recognize the sustaining profit return required to maintain the value of the assets and the viability of the Business and as may be permitted by the Ontario Energy Board.
- (b) Without the approval of the Shareholder, the Corporation will not:
 - (i) Expenditures – incur expenditures beyond those required to maintain the integrity of the existing distribution system and accommodate normal expansion within City of North Bay borders in an amount in excess of \$2,000,000.00 per project;
 - (ii) Acquisitions – purchase any assets of a business or shares of a business;
 - (iii) Sales – sell any distribution assets except in the normal course of business;

- (iv) Capital – issue, redeem or purchase any shares or convertible shares of the corporation or make any other change in the issued capital;
- (v) Capital Contribution – establish any requirement for capital contribution to the corporation from the Shareholder or the City of North Bay;
- (vi) Financial Obligations – take on or assume any financial obligation which would increase the debt/equity ratio of the Corporation on a consolidated basis above the ratio of 50:50;
- (vii) Tax, Regulatory Matters – make any decision which would adversely affect the tax or regulatory status of the Corporation in a material way;
- (viii) Real Estate – sell any real estate assets, (excluding only distribution line easements which are no longer necessary for the distribution system) without the consent of the Shareholder to the sale and the application of the proceeds of the sale or other disposition of the property or any portion thereof or any additions thereto.

ARTICLE 7 REPORTING

7.1 BUSINESS PLAN:

Not later than 60 days prior to the end of each fiscal year, the Board will approve and submit to the Shareholder City of North Bay, pursuant to the City of North Bay Shareholder Declaration a business plan for the next five fiscal years (the “Business Plan”). The Business Plan will be prepared on a consistent basis with the Business Plan then in effect. The Corporation will carry on its business and operations in accordance with the Business Plan which will include, in respect of the period covered by such plan:

- (a) the strategic direction and any new business initiatives which the Corporation will undertake;
- (b) an operating and capital expenditure budget for the next fiscal year and an operating and capital expenditure projection for each fiscal year thereafter, including the resources necessary to implement the draft business plan;
- (c) the projected annual revenues and profits for each fiscal year for the Corporation and each of the subsidiaries;
- (d) pro forma consolidated and unconsolidated Financial Statements;

- (e) an acquisition budget setting forth the nature and type of capital expenditures proposed to be made in the following fiscal year, supported by explanations, notes and information upon which the budget was based;
- (f) environmental plans;
- (g) any material variances in the projected ability of any business activity to meet or continue to meet the financial objectives of the Shareholder; and
- (h) any material variances from the Business Plan then in effect.

7.2 SEMI-ANNUAL REPORTS:

Within 45 days after the end of each half of the fiscal year, the Board will prepare (on a consistent basis with the previous fiscal period) and submit to the Shareholder a semi-annual. The semi-annual report will include, in respect of the immediately precedent fiscal period:

- (a) quarterly unaudited consolidated and unconsolidated Financial Statements;
- (b) such explanations, notes and information as is required to explain and account for any variances between the actual results from operations and the budgeted amounts set forth in the current Business Plan, including any material variances in the projected ability of any business activity to meet or continue to meet the financial objectives of the Shareholder;
- (c) information that is likely to materially affect the Shareholder's financial objectives or energy policies;
- (d) information that is likely to materially affect customers' perceptions or opinions regarding the Corporation;
- (e) information regarding any matter, occurrence or other event which is a material breach or violation of any law; and
- (f) any such additional information as the Shareholder may specify from time to time.

7.3 ACCESS TO RECORDS:

The duly appointed representatives of the Shareholder (as approved by report to the Municipal Council of the City of North Bay from time to time) shall have unrestricted access to the books and records of the Corporation during normal business hours. Such representatives shall treat all information of the Corporation with the same level of care and confidentiality as any confidential information of the Shareholder.

7.4 AUDIT:

The Corporation's consolidated and unconsolidated Financial Statements will be audited annually. The first auditor of the Corporation is KPMG, Chartered Accountants, (the "Auditor").

7.5 ACCOUNTING:

The Corporation will, in consultation with the Auditor, adopt and use the accounting policies and procedures which may be approved by the Board from time to time and all such policies and procedures will be in accordance with generally accepted accounting principles and applicable regulatory requirements.

7.6 ANNUAL FINANCIAL STATEMENTS:

The Board will cause the Auditor to deliver, as soon as practicable and in any event within 90 days after the end of each fiscal year, the audited consolidated Financial Statements of the Corporation for consideration by the Shareholder.

**ARTICLE 8
MISCELLANEOUS**

8.1 CONFLICT OF INTEREST POLICY:

The directors and officers of the Corporation will abide by the requirements of the OBCA and the Corporation's articles and by-laws in respect of conflicts of interest, including any requirements in respect of disclosure and abstention from voting.

8.2 CONFIDENTIALITY:

The Shareholder and the directors and officers of the Corporation (each a "Receiving Party") will ensure that no confidential information of the Shareholder or the Corporation is disclosed or otherwise made available to any person, except to the extent that:

- (a) disclosure to a Receiving Party's employees or agents is necessary for the performance of any Receiving Party's duties and obligations under this Declaration;
- (b) disclosure is required in the course of judicial proceedings or pursuant to law; or
- (c) the confidential information becomes part of the public domain (other than through unauthorized disclosure by the Receiving Party).

8.3 AMENDMENTS:

This Declaration may be amended solely at the discretion of the Shareholder. The Shareholder will consult with the Board and then provide ten (10) days prior written notice to the Board of any proposed amendments to this Declaration.

DATED at North Bay this 1st day of November, 2000.

NORTH BAY HYDRO HOLDINGS LIMITED

Per: _____

NORTH BAY HYDRO DISTRIBUTION LIMITED

Per: _____

W\SOLICIT\HYDDEC00 WPD

CITY OF NORTH BAY

TRANSFER BY-LAW

RELATING TO

NORTH BAY HYDRO

November 1, 2000

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SCHEDULE "C"

TO THE CORPORATION OF THE CITY OF NORTH BAY

BY-LAW NO. 2000 - 93

A By-law to authorize the transfer of the employees, assets, liabilities, rights and obligations of The Hydro-Electric Commission of the City of North Bay to successor corporations in accordance with the *Electricity Act*, 1998.

WHEREAS under subsection 145(1) of the *Electricity Act*, 1998 (the "Electricity Act") the Municipal Council (the "Council") of The Corporation of the City of North Bay (the "City") may make by-laws transferring employees, assets, liabilities, rights and obligations of the City or of a commission or other body through which the City distributes or retails electricity, to a corporation incorporated under the *Business Corporations Act* (Ontario) pursuant to section 142 of the *Electricity Act*;

AND WHEREAS the City distributes and retails electricity, operates a telecommunications service and carries on other associated business activities through the Hydro-Electric Commission of the City of North Bay ("North Bay Hydro"), incorporated pursuant to By-law No. 1336 enacted on the 4th day of November, 1940;

AND WHEREAS pursuant to subsection 142(2) of the *Electricity Act* the City has incorporated North Bay Hydro Distribution Limited, and North Bay Power Holdings Limited (the "Corporations") under the *Business Corporations Act* (Ontario) for the purpose of carrying on the distribution, and retailing of electricity, the telecommunications service and other associated business activities currently carried on by North Bay Hydro;

AND WHEREAS the City wishes to transfer all of the employees, assets, liabilities, rights and obligations of North Bay Hydro (whether registered in the name of North Bay Hydro or the City) associated with North Bay Hydro's business to the Corporations;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE CITY OF NORTH BAY HEREBY ENACTS AS FOLLOWS:

**PART 1
INTERPRETATION**

1. DEFINITIONS:

In this By-law, unless a contrary intention appears,

"Electricity Act" has the meaning given to it in the recitals and includes any regulations thereunder;

"Assets" means all assets, interests, property, rights and undertakings, registered (whether in the name of North Bay Hydro or the City) or unregistered, secured or unsecured (other than Excluded Assets) held or used exclusively by North Bay Hydro for the purpose of carrying on the generation, transmission, distribution, and retailing of electricity, the telecommunications service and associated business activities on the Effective Date, including, without limitation:

- (a) Real Property: All lands, premises and freehold property interests, mortgages, charges, agreements, notices of agreements, debentures and security interests which create an interest in land, liens (including without limitation, and notwithstanding any other provisions of this By-law, statutory liens to the date of the passing of this By-law), easements, rights-of-way, licences and rights to use or occupy real property and all other rights or interests therein, including those lands listed in Tab 2 of The Cooper Appraisal binder) excluding only the interests in the real property described in Schedule "H" (and for greater certainty not

including the freehold interest in any lands owned by the City and used by North Bay Hydro for easements or rights-of-way);

- (b) Leases of Real Property: All rights (whether as lessee or lessor) under leases of real property, together with all leasehold improvements relating thereto, including, without limitation, all rights under the leases described in Schedule "B";
- (c) Easements, etc.: All easements, rights-of-way, licenses, rights to use and occupy real property and rights under crossing agreements, including, without limitation, all rights described in Schedule "C";
- (d) Plant, Building, Fixtures: All plants, buildings, structures, erections, improvements, appurtenances and fixtures (included fixed machinery and fixed equipment), conduits, pipes, poles, wires, rods, cables, fibres and other apparatus, devices, appliances and equipment, materials, works, transformer stations, transformers, vaults, transmission lines, distribution lines, ducts, pipelines, fittings, apparatus, meters, wheresoever situate on private or public property used by North Bay Hydro; including without limiting the generality of the foregoing, all those assets set out in The Cooper Appraisal Company appraisal dated May 10, 1999;
- (e) Machinery and Equipment: All machinery and equipment, metering and measurement devices, hot water heaters and appliances and all goods and chattels and other personal property, including all tools, handling equipment, furniture, furnishings and other accessories;
- (f) Vehicles: All trucks, cars and other vehicles, including, without limitation, the vehicles described in Schedule "D", being Tab 3 of the Cooper Appraisal;
- (g) Inventories: All inventories and supplies including, but without limitation, all finished goods, work in progress, raw materials, production and shipping supplies and maintenance items and all other materials and supplies on hand to be used or consumed in the production of products;
- (h) Agreements: All rights, interests and benefits under all contracts, commitments, rights, choices in action, arrangements, understandings, licence or management agreements, and agreements, written or oral, to which North Bay Hydro is a party or otherwise, including, without limitation:
 - (i) all written or oral contracts, agreements, commitments, undertakings, rights and arrangements; and
 - (ii) all future and continuing commitments to North Bay Hydro for supplies or materials entered into in the usual and ordinary course of business whether or not there are any written contracts with respect thereto;
- (i) Employment Agreements: All rights and interests in contracts, agreements and commitments in respect of Employees to which North Bay Hydro is a party or by which it is bound, including, without limitation, all collective agreements and all contracts of employment;
- (j) Benefit Plans: All rights and interests in Employee benefit plans, pension plans, bonus or incentive plans, employee medical insurance and disability plans;
- (k) Intellectual Property: All of the right, title, benefit and interest of North Bay Hydro in and to all registered trade marks, trade names, brand names, patents and copyrights, all unregistered trade marks, trade names and copyrights and all patent applications, trade mark registration applications and copyright registration applications, both domestic and foreign, owned or made by North Bay Hydro or by the City in preparation for the incorporation of the Corporations, including, without limitation, those described in Schedule "E";

- (l) Licences and Permits: All licences, registrations, permits, consents, quotas, approvals, certificates and other authorizations, including, without limitation, those described in Schedule "F";
- (m) Prepaid Expenses: All prepaid expenses and deposits the benefits of which will accrue to the Corporations;
- (n) Computer Hardware and Software: All computer hardware and software, including all rights under licences and other agreements or instruments relating thereto, including, without limitation, the computer hardware and software and rights under licences, agreements and instruments described in Schedule "G";
- (o) Telecommunication Facilities: All fibre optic cables and associated equipment for the transmission of telecommunication signals, and all radio and telephone systems;
- (p) Cash and Accounts Receivable: All cash, securities, certificates of deposit, letters of credit, deposits, funds, accounts receivable of North Bay Hydro, including, without limitation, all customer and trade accounts, notes receivable, book debts and other debts due or accruing to North Bay Hydro and the benefits of all security and security deposits for such accounts and debts;
- (q) Books and Records: All personnel records, inspection records and all other records, books, documents and data bases relating to Employees, the Assumed Assets, the Assumed Liabilities or to the generation, transmission, distribution and retailing of electricity, the telecommunication service and the associated business activities of North Bay Hydro in the possession or under the control of North Bay Hydro;
- (r) Goodwill: The goodwill of North Bay Hydro, including:
 - (i) the exclusive right of the Corporations to represent themselves as carrying on a business in continuation of and in succession to North Bay Hydro and the right to use any words indicating that its business is so carried on; and
 - (ii) all records of sales, customer lists, customer data and supplier lists of or used by North Bay Hydro;
- (s) Insurance Policies: The full benefit of all policies of insurance or cooperative self insurance of North Bay Hydro.

"Assumed Liabilities" means all of the liabilities and obligations of North Bay Hydro or of the City in relation to the generation, transmission, distribution, and retailing of electricity, the telecommunications service and associated business activities of North Bay Hydro, and including, without limiting the generality of the foregoing, all costs, expenses, charges and taxes incurred or to be incurred by the City in connection with the incorporation and organization of the Corporations or the transfer of the Assets to the Corporations except for the Excluded Liabilities;

"City" has the meaning given to it in the recitals;

"City Treasurer" means the Director of Financial Services of the City;

"Closing Balance Sheet" has the meaning given to it in section 28;

"Corporations" has the meaning given to it in the recitals and "Corporation" means any one of such corporations depending on the context;

"Council" has the meaning given to it in the recitals;

"Effective Date" means November 1, 2000 or such other date as Council shall approve as the Effective Date;

"Employees" means all full-time and part-time, union and non-union, employees of North Bay Hydro, including all trainees, and probationary employees, employed by North Bay Hydro on the Effective Date;

"Excluded Assets" means those assets described in Schedule "H", including the head office at 1350 Fisher Street and the 3 surplus vacant lands at Carlo Crescent, Birch's Road and CFB North Bay;

"Excluded Liabilities" means any liabilities or obligations relating exclusively to the Excluded Assets, including the liabilities specified in Schedule "H";

"Fair Market Value" has the meaning given to it in section 18;

"North Bay Hydro" has the meaning given to it in the recitals;

"OBCA" means the *Business Corporations Act* (Ontario) and any regulations thereunder;

"OEB" means the Ontario Energy Board;

"OEBA" means the *Ontario Energy Board Act, 1998* and any regulations thereunder;

"Subsidiary" means, with respect to any of the Corporations, any corporation (i) whose shares to which are attached more than fifty percent (50%) of the voting rights ordinarily exercisable at meetings of the shareholders of such corporation (including shares which are voting only upon the occurrence of a contingency where such contingency has occurred and is continuing) are beneficially owned, directly or indirectly, by the Corporation; and (ii) the votes carried by such shares are sufficient, if exercised, to elect a majority of the board of directors of the Corporation and includes any corporation in like relation to a Subsidiary.

2. SEVERABILITY:

If any provision of this By-law is declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of this By-law as whole or any part thereof, other than the provision so declared to be invalid.

3. SCHEDULES:

The following Schedules are attached to this By-law and are by this reference deemed to be incorporated in and to form part of this By-law hereof:

Schedule "A" -	Real Property Interests
Schedule "B" -	Real Property Leases
Schedule "C" -	Easements
Schedule "D" -	Vehicles
Schedule "E" -	Intellectual Property
Schedule "F" -	Licences and Permits
Schedule "G" -	Computer Hardware and Software
Schedule "H" -	Excluded Assets and Excluded Liabilities
Schedule "I" -	Allocation of Consideration

4. PARTIES IN INTEREST:

This By-law shall enure to the benefit of and be binding upon the City, North Bay Hydro, the Corporations and their respective successors and assigns.

5. TRANSFERS:

- (1) In accordance with section 145 of the Electricity Act, this By-law applies despite any general or special act or any rule of law, including any act or rule of law which requires notice or registration of transfers.
- (2) Despite subsection (1), the City or the Corporations shall execute and register such documents, instruments and agreements, including certified copies of this By-law, or take such further corporate action as may be necessary or desirable in order to evidence or confirm such transfers.

**PART 2
SUCCESSOR CORPORATIONS**

6. INCORPORATION:

The incorporation of the Corporations under the OBCA to continue the distribution and retailing of electricity, the telecommunications service and the associated business activities of North Bay Hydro is authorized, ratified and confirmed, and the incorporation of any further Subsidiaries necessary for such activities may be authorized by resolution of Council.

7. INITIAL ISSUANCE OF SHARES:

Any common shares or other securities issued by any of the Corporations incorporated pursuant to this By-law shall be issued upon such incorporation in the name of the City.

8. SHAREHOLDER ADMINISTRATION:

The City, in its capacity as initial shareholder of the Corporations, shall execute and deliver any shareholder agreement, direction or declaration to provide for the organization, management and administration of the Corporation and any Subsidiaries.

9. REGISTRATIONS:

The City and North Bay Hydro shall execute and deliver to the Corporations, where necessary, in a form suitable for registration, recording and filing with such public authorities as may be reasonably required by the Corporations, any bills of sale, assignments, instruments of transfer, assurances, consents and other documents necessary to effectively transfer to the Corporations all of the City's and North Bay Hydro's right, title and interest in and to the Assets.

**PART 3
TRANSFER OF ASSETS, LIABILITIES AND EMPLOYEES**

10. TRANSFER TO CORPORATIONS:

The Assets and the Assumed Liabilities of North Bay Hydro held or used in connection with owning and operating, the distribution and retailing of electricity, the telecommunications service and associated business activities of North Bay Hydro are hereby transferred, conveyed, assigned and set over to and assumed by the Corporations in accordance with the Electricity Act and this By-law.

11. NORTH BAY POWER DISTRIBUTION LIMITED - ASSETS, LIABILITIES AND EMPLOYEES:

On the Effective Date the Assets, Assumed Liabilities and Employees of North Bay Hydro used in connection with owning and operating an electricity distribution system and the telecommunications service including water heaters rental business, street light maintenance business and sentinel light rental business are transferred to and assumed by North Bay Hydro Distribution Limited.

12. SUBSEQUENT TRANSFERS:

- (1) Any of the Assets and Assumed Liabilities of North Bay Hydro and Employees which are transferred to the Corporations pursuant to this By-law may, subject to the provisions of the Electricity Act, be subsequently transferred by the Corporations to any Subsidiary on such terms and for such consideration as the directors of the transferring Corporation may from time to time approve for purposes of complying with any applicable legislation or for such other purpose as such directors may determine.
- (2) The City, North Bay Hydro or the Corporations shall enter into and execute any agreements or other documents required to evidence such transfers.

13. TRANSFERRED EMPLOYEES:

The Employees transferred to the Corporations, in accordance with sections 145 and 147 of the Electricity Act, shall cease to be Employees of North Bay Hydro from and including the Effective Date and shall thereupon become employees of one of the Corporations.

14. EXCLUDED ASSETS AND LIABILITIES:

For greater certainty, the Excluded Assets and Excluded Liabilities are not being transferred to the Corporations and are retained by the City.

15. ASSIGNMENTS REQUIRING CONSENTS:

In the event that, despite any other provision of the Electricity Act or this By-law, any of the Assets shall be found not to be assignable or shall only be assignable with the consent or approval of any other third party, the City or North Bay Hydro as the case may be shall:

- (a) use all reasonable efforts in co-operation with the assignee Corporation to secure the consent required in connection with those assignments and all costs of obtaining any consent will be paid by the assignee Corporation; and
- (b) pending the effective transfer thereof, hold all rights or entitlements that the City or North Bay Hydro has thereto in trust for the exclusive benefit of the assignee Corporation, provided that the assignee Corporation shall pay, perform and discharge all obligations arising or accruing with respect thereto during such period and indemnify the City and North Bay Hydro in respect thereof.

**PART 4
TRANSFER CONSIDERATION**

16. MARKET VALUE / BOOK VALUE:

- (1) The Assets transferred to North Bay Hydro Distribution Limited and North Bay Hydro Services Limited pursuant to this By-law shall, subject to adjustment pursuant to this By-law, be transferred at their market value determined in accordance with Part 5 as well as an addition to the goodwill account of the Corporations in the amount of the difference between the determined fair market value and the book value, if any, on the Effective Date. Pending the determination of market value, the transfers shall be made initially at book value. There shall be a subsequent adjustment as required and defined by the OEB.

17. FORM OF PAYMENT:

- (a) North Bay Hydro Distribution Limited

The consideration payable by North Bay Power Distribution Limited for the Assets transferred to it hereunder shall be satisfied as follows:

- (i) by the assumption by North Bay Power Distribution Limited of the Assumed Liabilities relating to the Assets transferred to North Bay Power Distribution Limited pursuant to section 11, the amount of which will be determined by the City Treasurer in consultation with the Corporation; and
- (ii) as to the balance:
 - (A) the issuance by North Bay Power Distribution Limited to the City of a promissory note having a principal amount equal to 50% of such Book Value, to be due and payable on demand, with interest at the rate of 0 % per annum, secured by all the assets of the Corporation, and which may be exchanged for other debt instruments and such other terms, including amendment of the rate of interest, as the Council deems fit by amendment to the Shareholder's Declaration by the Council of the City.
 - (B) by the issuance and allotment to the City of 1,000 fully paid and non-assessable common shares of North Bay Power Distribution Limited having an ascribed value equal to 50% of the remainder of the Book Value of such balance, which amount shall be added to the stated capital account for such shares.

18. EXCHANGE OF COMMON SHARES:

Pursuant to Regulation 516/99, the City shall, and shall be deemed to, have transferred as of the Effective Date all of the common shares in North Bay Hydro Distribution Limited and North Bay Hydro Services Limited which were issued to the City pursuant to this By-law to North Bay Hydro Holdings Limited in consideration of the issuance to the City of 1000 common shares of North Bay Hydro Holdings Limited.

19. NORTH BAY HYDRO HOLDINGS LIMITED:

The transfer under section 18 shall be deemed to have been effected at the aggregate fair market value of such voting securities as determined by the City Treasurer and an amount equal to such aggregate fair market value shall be added to the stated capital account of the shares of North Bay Hydro Holdings Limited.

20. ALLOCATION OF CONSIDERATION AMONG ASSETS:

The consideration payable by the Corporations shall be allocated among the Assets in a manner which is consistent with the Closing Balance Sheet or such other manner as may be agreed upon by the City Treasurer.

21. CONVERSION COSTS:

All consulting costs and expenses incurred by the City shall be borne by the City and all re-engineering costs and provincial taxes incurred or payable in connection with the transfer of the Assets and other re-engineering activities related to the business conversion shall be borne by the Distribution Corporation, to the extent that such re-engineering costs are allowed to be included by the Distribution Corporation for rate-making purposes by the Ontario Energy Board.

22. INDEMNITY AND RELEASE:

- (1) The Corporations shall be bound by, assume, pay, satisfy, discharge, observe, perform and fulfil, and indemnify and save harmless the City, its officers and employees and North Bay Hydro from and against all of the Assumed Liabilities.
- (2) In accordance with subsection 153(2) of the Electricity Act, the City and North Bay Hydro shall be released from all obligations and liabilities transferred hereby to the Corporations, which obligations and liabilities shall become the sole responsibility of the Corporations as of the Effective Date.

23. TAX EXEMPTIONS:

Any transfer of Assets under this By-law is exempt from *Land Transfer Tax and Retail Sales Tax* under section 159 of the Electricity Act.

24. BULK SALES ACT EXEMPTION:

Any transfer of Assets under this By-law is exempt from the provisions of the *Bulk Sales Act* (Ontario) under section 159 of the Electricity Act.

25. GOODS AND SERVICES TAX:

- (1) Any transfer under this By-law constitutes the transfer of all or substantially all of the Assets considered reasonably necessary for the relevant Corporation to carry on the business transferred to it as a business.
- (2) The City and the relevant Corporation, both registered for *Federal Goods and Services Tax* ("GST") purposes under the *Excise Tax Act* ("ETA"), shall jointly sign the election provided for in section 167 of the ETA and the relevant Corporation shall file the election in accordance with the provisions of the ETA, together with any GST return for the reporting period in which the transfer took place, so that the transfer is not subject to GST.

**PART 5
DETERMINATION OF BOOK VALUE**

26. CLOSING BALANCE SHEET:

As soon as possible following the Effective Date, North Bay Hydro shall deliver to the Corporations a balance sheet (the "Closing Balance Sheet") for the business on the Effective Date, prepared in accordance with the accounting principles prescribed in the manual of Accounting for Municipal Electric Utilities in Ontario applied on a basis consistent with those used in the preparation of the 1999 audited financial statements for North Bay Hydro. The Closing Balance Sheet shall be accompanied by a report thereon by North Bay Hydro's auditors. For the purpose of preparing the Closing Balance Sheet, the Corporations agree to grant North Bay Hydro's and the City's authorized representatives full and complete access to relevant records, facilities and personnel of the Corporations. The costs associated with the preparation and audit of the Closing Balance Sheet shall be borne by North Bay Hydro Distribution Limited.

27. STATEMENT OF CONSIDERATION:

At the time of delivery of the Closing Balance Sheet, North Bay Hydro shall also deliver to the Corporations:

- (a) a statement setting forth a detailed calculation of the book value consideration payable by each of the Corporations and the amount by which the consideration exceeds the aggregate amount of the Assumed Liabilities for each Corporation; and
- (b) an itemized list of all Assumed Liabilities reflected on the Closing Balance Sheet.

**PART 6
MISCELLANEOUS**

28. FURTHER AGREEMENTS:

Pursuant to the Shareholder Declaration, the relevant Corporation shall enter into the following agreements with the City as soon as reasonably practicable after the Effective Date:

- (a) if required, an agreement in respect of the maintenance and design of street lighting services;
- (b) if required, an agreement to recognize the existing use of hydro plant over City-owned land; and
- (c) if required, an agreement in respect of the use of hydro easements by the public sector fibre optics network.

29. ACTIONS AUTHORIZED:

The Mayor and proper officers of the Corporation are authorized to execute any documents and to take such actions as may be advisable or necessary to carry out the provisions or intentions of this By-law.

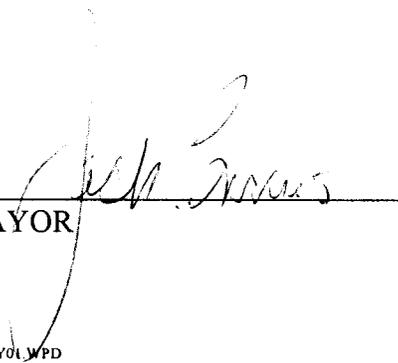
30. COMMENCEMENT:

This By-law comes into force upon being passed.

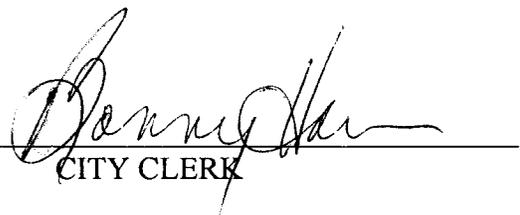
READ A FIRST TIME IN OPEN COUNCIL THIS 21ST DAY OF AUGUST, 2000.

READ A SECOND TIME IN OPEN COUNCIL THIS 23RD DAY OF OCTOBER, 2000.

READ A THIRD TIME IN OPEN COUNCIL AND ENACTED AND PASSED THIS 23RD DAY OF OCTOBER, 2000.



MAYOR



CITY CLERK

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