

CITY OF NORTH BAY

Schedule C

TRANSFER BY-LAW No. 2000-93

as amended by By-law 2000-139

**RELATING TO
NORTH BAY HYDRO**

November 1, 2000

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THE CORPORATION OF THE CITY OF NORTH BAY

BY-LAW NO. 2000 - 139

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;

AND WHEREAS Schedule C to By-law No. 2000-93, being the Transfer By-law for North Bay Hydro pursuant to the *Electricity Act*, contained certain inadvertent typographical references to corporate names, and it is deemed desirable to ensure the correct names are set out therein, as noted below;

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

1. Schedule "C" to North Bay By-law 2000-93 is hereby amended by deleting Schedule "C" attached thereto and inserting the following in lieu thereof:

**PART I
INTERPRETATION**

I. 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

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 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 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 Hydro Distribution Limited for the Assets transferred to it hereunder shall be satisfied as follows:

- (i) by the assumption by North Bay Hydro Distribution Limited of the Assumed Liabilities relating to the Assets transferred to North Bay Hydro 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 Hydro 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 Hydro 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 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.

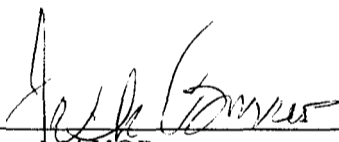
30. COMMENCEMENT:

This By-law comes into force upon being passed.

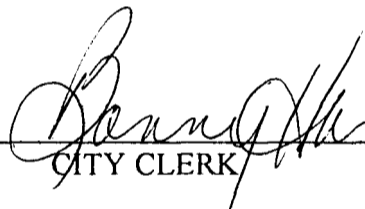
READ A FIRST TIME IN OPEN COUNCIL THIS 30th DAY OF OCTOBER, 2000.

READ A SECOND TIME IN OPEN COUNCIL THIS 30th DAY OF OCTOBER, 2000.

READ A THIRD TIME IN OPEN COUNCIL AND ENACTED AND PASSED THIS 30th DAY OF OCTOBER, 2000.



MAYOR



CITY CLERK

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