

## MEMORANDUM

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**TO:** Economic Development Task Force Members  
City of Nanaimo

**CC:** Bill Corsan  
Director of Community Development

**FROM:** Allan Neilson  
Neilson Strategies Inc.

**DATE:** July 23, 2020

**SUBJECT:** **NANAIMO PROSPERITY AGENCY — CORPORATION CHARTER**

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### AMENDED VERSION

Please see attached the proposed *Nanaimo Prosperity Agency: Corporation Charter*. The document incorporates the key points that were raised by Task Force members on the most recent version of the *Charter* at the July 15, 2020, Task Force meeting. Specific points to note are as follows:

- > *Mandate* — The list of focus areas has been rearranged to place business and investment attraction near the top, and to put business retention and expansion efforts (existing businesses) at the bottom.
- > *Shared Ownership* — The Task Force endorsed the concept of shared ownership. In the *Charter*, therefore:
  - the City of Nanaimo is the primary but not the sole shareholder of the Agency
  - other key agencies important to Nanaimo's economic development have an ownership stake in the Agency
- > *Shareholders* — The *Charter* identifies five Nanaimo-based entities as Class B shareholders. After considerable discussion, the Task Force determined to present the *Charter* as an information item to City Council with the five entities identified, on the understanding that the City will connect with each entity in the coming weeks to determine its interest in participating as a Class B shareholder.

The Task Force expressed a desire to ensure that only public and non-profit entities (i.e., no private, for-profit companies) could become future Class B shareholders. The Task Force also referred to the desirability in future years to extend the Agency's geographic focus beyond the City of Nanaimo to include other local government jurisdictions in the Mid-

Island region. In support of this point, the text has been changed to allow the possibility for another municipality or regional district to become a Class A shareholder in the future.

- > *Shareholder Decisions* — The Task Force raised a concern related to voting by shareholders on matters assigned to the shareholders.<sup>1</sup> The concern pointed to the language in the previous version of the document that calculated voting outcomes based on the number shareholders present at the time, rather than the larger number of all shareholders. To address this concern, and to ensure broad support for shareholder decisions, the section has been changed to require two-thirds majority support among all shareholders on shareholder decisions. In practice, this change means that:
  - with six (6) shareholders (as envisioned in the *Charter*), shareholder decisions would require the support of four (4) individual shareholders (one vote per shareholder)
  - with five (5) shareholders, decisions would also require the support of four (4) shareholders
  - with seven (7) shareholders, decisions would require the support of five (5) shareholders

In all scenarios, decisions on matters assigned to shareholders would require broad support and would, in practice, represent the consensus of the group. No single shareholder could veto a decision in any situation (i.e., at least two shareholders would be needed for a vote to fail).

- > *Board of Directors (Composition)* — This version of the document retains the Board structure that was proposed in the most recent version. The City of Nanaimo in this structure designates:
  - one (1) senior staff member to serve as a voting Director
  - one (1) elected official to serve on the Board, *ex officio*, as a non-voting Director

City staff will determine how it wishes to proceed with these designations. The City may choose to transfer the assignment of voting status to its Council designate.

- > *Board of Directors (Decisions)* — The voting rules for the Board are different from those of the shareholders noted earlier. The *Charter* states that decisions of the Board require a straight majority of Directors present, with a *quorum* of five (5) required. This provision is consistent with other voting bodies at the City, including City Council and Council committees (see *Council Procedure Bylaw 2018, No. 7272*). The different rules proposed earlier for shareholder votes reflect the fact that each shareholder is a different corporate

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<sup>1</sup> It should be remembered that it is the Board of Directors, not shareholders, that is the primary decision-making body for the Nanaimo Prosperity Agency. The matters to be decided by shareholders are limited to fundamental purpose and structural matters such as the Agency's mandate, ownership, governance, and funding. The full list of such matters is included in the *Charter*.

entity. The different rules also reflect the different sets of matters on which decisions are required.

- > *Funding Model (Base Funding)* — Staff and the consultant will work to develop an estimated base funding level for the first full year of Agency operations. The cost-sharing approach for base funding each year has been changed in response to concerns raised by the Task Force. The new approach is presented as follows:

*"The City of Nanaimo, as the sole Class A shareholder, accepts responsibility for the bulk of these base funding expenses. Class B shareholders as a collective contribute a small portion of base funding as a demonstration of their support for the Agency and its value to the community. The total amount of base funding approved by the Board of Directors each year is assigned to shareholders as follows:*

- > *Class B shareholders as a group contribute \$50,000*
- > *City of Nanaimo contributes the remainder"*

The language on the Class B shareholder collective contribution provides certainty to these entities by capping the total annual investment expected. The language does not specify the amount to be paid by each individual entity. Flexibility on this point is intentional and reflects the fact that not all proposed shareholders will be able to make the same financial contribution.

- > *Five Year Review* — The Task Force expressed a concern that six (6) months' notice of termination by a shareholder was too short a period. The language has been changed to require twelve (12) months' notice. The section has been re-worked further to ensure that the Agency is given five (5) years' certainty with respect to funding and operations. Accordingly, no shareholder is able to give notice of termination until the end of the Agency's fifth year of operations, by which time the City will have completed its required review of the Agency. In practice, this requirement on giving notice means that any shareholder that wished to quit the Agency could only leave at the end of Agency's sixth year of operations, once the notice period had ended.

The alternative to this approach would require the City to conduct a review in the Agency's fourth year, and a shareholder to issue termination notice at the end of year four (4). The intent of the Task Force, it is understood, is to provide the Agency with five (5) clear years of operation before any departure of founding shareholders is contemplated. Hence the final statement of the section:

*"For clarity, none of the founding shareholders may issue notice of termination before the end of year five (5)."*

- > *Second Five-Year Term* — The Task Force expressed a desire for shareholders to commit to a

second five-year term at the end of the first. This point has been added.

### **MOVING FORWARD**

As emphasized at the July 15, 2020, Task Force meeting, the *Charter* is a working, non-legal document that captures the intent of the City and key economic development stakeholders to develop a separate economic development corporation called the Nanaimo Prosperity Agency. The *Charter* serves as a blueprint that set out the purpose, ownership, structure, governance, and funding of the Agency for consideration by Council, and for review with proposed shareholders and further discussion (as necessary) with the Task Force.

City staff will be presenting the *Charter* to Council for information at an upcoming Council meeting. Once the Charter has been received by Council, staff will connect with the proposed shareholders to review the potential for ownership. Ultimately, the contents of the *Charter*, revised as necessary based on further discussions, will be incorporated into two legal documents — namely a *Shareholder Agreement* and *Articles of Incorporation*.



**Nanaimo Prosperity Agency**  
**July 23, 2020**

## **CORPORATION CHARTER**

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|                             |  |
|-----------------------------|--|
| <b>NAME:</b>                | Nanaimo Prosperity Agency Inc.   |
| <b>PURPOSE:</b>             | The Nanaimo Prosperity Agency is the economic development corporation through which business, government, First Nation, and community partners collaborate to build Nanaimo's economy, and increase the level of shared prosperity enjoyed by those who live here.   |
| <b>MANDATE:</b>             | <p>The Nanaimo Prosperity Agency has the following responsibilities:</p> <ul style="list-style-type: none"><li>&gt; to implement, maintain, and update as required the Nanaimo Economic Development Strategy</li><li>&gt; to develop and directly undertake initiatives aimed at attracting businesses, employers, talent, and investment to the community</li><li>&gt; to coordinate the sector-specific and other economic development activities undertaken by a range of stakeholder organizations</li><li>&gt; to develop and directly undertake initiatives aimed at retaining and expanding existing businesses</li></ul> |
| <b>LEGAL<br/>STRUCTURE:</b> | <p>The Nanaimo Prosperity Agency is a City of Nanaimo local government corporation, created pursuant to section 185 of the <i>Community Charter</i>. The Agency is incorporated under the British Columbia <i>Business Corporations Act</i>, and is registered as a non-profit corporation under the <i>Income Tax Act</i> of Canada, exempt from paying income taxes.</p>   |
| <b>SHAREHOLDERS:</b>        | <p>The Nanaimo Prosperity Agency is jointly-owned by the City of Nanaimo and five other governments and organizations, including (in alphabetical order):</p> <ul style="list-style-type: none"><li>&gt; Nanaimo Chamber of Commerce</li><li>&gt; Nanaimo Airport Commission</li><li>&gt; Nanaimo Port Authority</li><li>&gt; Snuneymuxw First Nation</li><li>&gt; Vancouver Island University</li></ul>   |

All six partner organizations, including the City, are designated as the founding *Shareholders* in the Agency's *Articles of Incorporation*.

The City of Nanaimo, as the lead shareholder, holds one Class A share in the Agency; each of the other shareholders holds one Class B share. All Class A and Class B shares are without par value.

**SHAREHOLDER  
DECISIONS:**

Key decisions related to the mandate, ownership, governance, expansion, and funding of the Agency are made by the shareholders in accordance with the following voting rules:

> All shareholders (i.e., Class A and Class B shareholders) participate in, and receive one vote on, decisions related to:

- the Agency's purpose and mandate
- the composition and authority of, and method of appointment to, the Agency's Board of Directors
- the appointment of individual Directors to the Board
- the Agency's funding model, including changes to cost-sharing arrangements to support the work of the Agency
- the categories of Agency expenses to be included under "base funding"
- the inclusion of additional Class B shareholders, which may be public, First Nation, and/or not-for-profit entities

In an effort to ensure broad support for decisions involving all shareholders, votes on the matters to be decided by the full group require two-thirds support of all shareholders.

- > The City of Nanaimo, as the sole Class A shareholder, makes all decisions related to:
- the borrowing of monies by or on behalf of the Agency
  - any change to the Agency's non-profit status
  - the inclusion of additional Class A shareholders, which must be either municipalities or regional districts

**BOARD OF  
DIRECTORS  
(Composition):**

The Nanaimo Prosperity Agency is governed by its own Board of Directors which is comprised of nine (9) voting Directors appointed by the shareholders at the corporation's Annual General Meeting, in accordance with the following rules on composition:

- > the City of Nanaimo designates one (1) senior staff member to serve as a voting Director
- > each of the other shareholders designates one (1) individual to serve as a voting Director

- > the shareholders together select and appoint the remaining three (3) voting Directors from persons who apply to the Board through a public call for applicants

In addition to these nine (9) voting Directors, the City of Nanaimo designates one (1) elected official to serve on the Board, *ex officio*, as a non-voting Director.

In appointing Directors, the shareholders take into consideration:

- > the skill sets and backgrounds (e.g., finance, business development, marketing, community development) that should, to the extent possible, inform the decisions of the Board
- > the economic sectors in Nanaimo that candidates represent

**BOARD OF  
DIRECTORS  
(Term):**

Each voting Director is appointed for a term of two (2) years, and may be reappointed by the shareholders for two (2) consecutive additional terms, for a maximum period of six (6) years. Additional rules on term of office intended to promote continuity in Agency governance are as follows:

- > Five (5) of the nine (9) voting Directors of the inaugural Board are appointed for a three (3) year term; these Directors may be re-appointed for an additional two (2) consecutive terms, each of which is two (2) years in duration.
- > Directors are appointed (or reappointed, as the case may be) on a staggered basis beginning at the end of year two when four (4) voting Director positions become open.

**BOARD OF  
DIRECTORS  
(Chair/Vice):**

At the first Board meeting of each calendar year, following the Annual General Meeting, the Board Directors elect from among their numbers a Board Chair and Vice Chair. The duties of the Chair include:

- > presiding at all meetings of the Board
- > providing leadership to the Board, including by recommending resolutions
- > providing, on behalf of the Board, general direction to the Agency's Executive Director
- > acting as the Board's chief liaison with the shareholders, the media, and external agencies
- > signing contracts and other legal documents in accordance with Board decisions
- > carrying out other duties assigned by the Board

The Vice Chair acts in place of the Chair when the Chair is absent.

**BOARD OF  
DIRECTORS  
(Remuneration):**

All Board members serve without remuneration. Expenses incurred to conduct Agency business may be claimed in accordance with Board policies.

**BOARD OF  
DIRECTORS  
(Decisions):**

The Board of Directors is an autonomous decision-making body, appointed to direct and oversee the activities of the Nanaimo Prosperity Agency. The Board is empowered to make a broad range of decisions, including those related to:

- > the Agency's annual five-year financial plan (i.e., operating and capital budgets)
- > the Economic Development Strategy for Nanaimo
- > the hiring of the Executive Director for the Agency
- > empowering and holding to account the Agency's Executive Director
- > the development of policies and protocols to govern Agency business
- > entering into agreements and contracts, and terminating such agreements and contracts
- > initiating projects and programs to implement the Economic Development Strategy
- > appointing an independent auditor to prepare the Agency's *Annual Financial Statements*
- > the creation, and appointment of members to, Board advisory committees

All Directors vote on all decisions of the Board; each Director including the Chair holds one vote. Decisions in favour of a resolution require a straight majority of Directors present. A quorum of five (5) voting members is required for meetings to be held and voting to occur.

**BOARD OF  
DIRECTORS  
(Committees):**

The Board of Directors creates advisory committees to engage the broader community in the economic development of Nanaimo, to assist in implementing the Economic Development Strategy, to provide advice on new and ongoing initiatives, and to attend to the business of the Board. The Board's choice of committees is informed by the Economic Development Strategy, opportunities or issues that arise, requests made by different sectors of the community, and the Board's own needs.

The list of specific Committees is determined by the Board, but includes:

- > Governance Committee
- > Finance Committee

All committee members are appointed by the Board as a whole. The Board as a whole also appoints a Chair and Vice Chair for each committee.



**BOARD OF  
DIRECTORS  
(Reporting):**

The Board is accountable to the shareholders for the operation and performance of the Nanaimo Prosperity Agency. Accountability is achieved through:

- > the presentation to the shareholders, and to the public, of Annual Financial Statements prepared by an independent auditor
- > the presentation to the shareholders, and to the public, of an Annual Report that:
  - provides information on the Agency's initiatives and efforts over the previous year
  - assesses the Agency's past year performance using progress measures that are informed by the Economic Development Strategy
  - sets out important initiatives and events that are planned for the upcoming year, as per the Economic Development Strategy
- > presentations to the shareholders at the Agency's Annual General Meeting
- > semi-annual briefings to each shareholders
- > other means, formal and informal, that the shareholders may request

**FUNDING  
MODEL  
(Base Funding):**

Base funding for the Agency is in place to provide the support and certainty required by the Agency to function effectively, particularly during its early years. Base funding is intended to cover:

- > Agency staffing costs
- > the operation of the Board
- > office expenses including rent/lease
- > an amount for marketing, business development, talent development, and other initiatives aimed at attracting business and investment to Nanaimo
- > community outreach and reporting
- > other costs identified by the Board and approved as "base funding" by the shareholders

The City of Nanaimo, as the sole Class A shareholder, accepts responsibility for the bulk of these base funding expenses. Class B shareholders as a collective contribute a small portion of base funding as a demonstration of their support for the Agency and its value to the community. The total amount of base funding approved by the Board of Directors each year is assigned to shareholders as follows:

- > Class B shareholders as a group contribute \$50,000
- > City of Nanaimo contributes the remainder

**FUNDING  
MODEL  
(Projects):**

Project funding is provided in part by shareholders through their investment in base funding, and in part by private businesses, governments, and public agencies in the form of conditional, initiative-related grants. In identifying the need for project funding, and in pursuing sources of funds, the Agency is guided by the Economic Development Strategy.

**EXECUTIVE  
DIRECTOR:**

Nanaimo Prosperity Agency is headed by an Executive Director who is hired by and accountable to the Board of Directors. The Executive Director:

- > directs and oversees the work of Agency staff, contractors, and consultants
- > recommends to the Board the development of new staff and contract positions
- > advises the Board on the implementation, maintenance, and updating of the Economic Development Strategy
- > identifies for Board approval initiatives aimed at fulfilling the Agency's mandate
- > liaises with senior staff at the City of Nanaimo, key representatives of the other shareholders, and businesses, associations, and other groups in Nanaimo
- > represents the Agency at various events inside and outside of Nanaimo

**OPERATIONS:**

The Nanaimo Prosperity Agency leases its own office space in Downtown Nanaimo. The Agency attends to its own operational needs, including those related to financial management and accounting, legal matters, human resources, purchasing, information technology, and others.

Where cost-effective, the Agency may contract the City of Nanaimo to provide corporate and other services required for the Agency's operations.

**DISPUTE  
RESOLUTION:**

The shareholders attempt to resolve disagreements and disputes among themselves through discussion. Where necessary, shareholders may seek the assistance of a third-party mediator to provide non-binding recommendations.

Where discussion and mediation fail, shareholders agree to resolve disputes through the appointment of a single arbitrator, using final proposal arbitration under the provisions of the *Arbitration Act*.

**FIVE-YEAR  
REVIEW:**

All founding shareholders, including the City of Nanaimo, agree to support, fund, and participate in the Nanaimo Prosperity Agency for an initial period of five (5) years.

In the second half of the Agency's fifth year of operations, the City will initiate and complete a review of the Agency that:

- > examines the Agency's mandate, structure, funding, and performance, along with other factors that the shareholders may identify
- > assesses the level of community and shareholder support for the Agency
- > examines the potential to expand the Agency's service area to include the broader Mid-Island economic region
- > identifies changes to the Agency and/or corporation model for consideration by the shareholders

At the end of the Agency's fifth year of operations, any shareholder may serve twelve (12) months' notice of its intention to terminate its position in the Agency. A shareholder that exercises this option understands that:

- > termination of shareholder status takes effect at the end of the year six (6) of Agency operations
- > termination of shareholder status does not change any financial commitment made by the shareholder to an ongoing project or initiative of the Agency

For clarity, none of the founding shareholders may issue notice of termination before the end of year five (5).

**SECOND FIVE-  
YEAR TERM:**

Shareholders that have not issued notice of termination at the end of the Agency's fifth year of operations commit, by default, to a second five (5) year period of commitment as a shareholder in the Agency.