



ROTHESAY
2024 April 29 Special Meeting FINAL web_001
SPECIAL OPEN COUNCIL MEETING

Monday April 29, 2024
6:00 p.m.
AGENDA



PLEASE NOTE: Electronic means of communication may be used during the meeting

Public access to the livestream will be available online:
[Rothesay YouTube Channel](#)

1. **CALL TO ORDER**
2. **ENVISION Saint John – Agreement**
PRESENTATION: Andrew Beckett, Interim CEO

26 April 2024 Memorandum from Town Manager Jarvie
28 March 2024 Draft Members Agreement
3. **Dobbin Street - Amending Development Agreement**
26 April 2024 Memorandum from Town Manager Jarvie
4. **NEXT MEETING**
Monday, May 13, 2024 Regular Meeting
5. **ADJOURNMENT**



ROTHESAY



INTEROFFICE MEMORANDUM

TO	:	Mayor Grant & Council
FROM	:	John Jarvie
DATE	:	28 April 2024
RE	:	Proposed Changes to Envision Members' Agreement

Recommendation:

It is recommended Council adopt the revised Members' Agreement.

Background

In your package Andrew Beckett, the Executive Director (Interim) has provided a comprehensive overview of the history of Envision and the Members' Agreement along with the changes proposed and the rationale for each. The following are a few observations with respect to the proposed changes.

- a. In my view the reporting by Envision to the local governments individually and collectively has been significantly improved by these changes. The agreement clearly identifies what is to be reported and when.
- b. Council should note that the representatives of the respective local governments at Members meetings are intended to be the chief administrative officers or their designates.
- c. All votes at Members meetings will be weighted votes based largely on the population formula used at the RSC. Although this is not specifically expressed in 3.2 (b).
- d. There is no mention of funding. Funding was a key component of the previous agreement. The responsibility for funding Envision will move to the regional service commission (RSC). It is our understanding but not explicit in the Agreement that the original funding formula would be applied for the 2025 budget. This formula generates more revenue than required to run the agency in my opinion. This is a topic for the RSC in consultation with Envision.
- e. Previously, and even more in the revised agreement, the local governments will have a limited sightline into the compensation or procurements policies of the organization.
- f. One of the features that is proposed for removal is the opportunity for any local government to audit Envision. This was one of the few actions that could be taken unilaterally. I could identify no actions vis-à-vis Envision that Rothesay could take independent of the other local governments. This is primarily a result of mandatory participation set out in the provincial government's municipal reform agenda.
- g. Some clarity is required with respect to the length of the term of the Chair.
- h. Generally speaking such financial support as contemplated in 3.2 (b) (vii) (B) should be set out specifically in the Budget.
- i. It is not clear that the other Members would approve or even be aware of such other services and programs to be provided under section 4.3.
- j. The Accommodation Levy, clause 5.2 "shall" should read "may" since there is an option provided in the following language in the Agreement.

Many of these comments are of limited importance in the context of an agreement that has been endorsed by most of the other local governments. It may be possible to address some of them through the adoption process of the bylaws.

**AMENDED AND RESTATED MEMBERS' AGREEMENT
ENVISION SAINT JOHN: THE REGIONAL GROWTH AGENCY**

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MEMBERS' AGREEMENT

THIS MEMBERS' AGREEMENT is dated _____, 2024 and effective as of January 1, 2024,

AMONG:

THE CITY OF SAINT JOHN
(**"Saint John"**)

- and -

GRAND BAY-WESTFIELD
(**"Grand Bay-Westfield"**)

- and -

HAMPTON
(**"Hampton"**)

- and -

QUISPAMIS
(**"Quispamsis"**)

- and -

ROTHESAY
(**"Rothesay"**)

- and -

FUNDY-ST. MARTINS
(**"Fundy-St. Martins"**)

- and -

**ENVISION SAINT JOHN: THE REGIONAL
GROWTH AGENCY**
(**the "Agency"**)

WHEREAS:

- A. The Agency was incorporated as New Regional Economic Development Agency for Greater Saint John pursuant to the *Canada Not-for-Profit Corporations Act*, S.C. 2009, c. 23 (the "**Act**") to promote economic development in the Region and otherwise give effect to the obligations, responsibilities, goals and objectives described in the articles of incorporation of the Agency and herein;
- B. The Agency was initially created by its members: the City of Saint John, the Town of Quispamsis, the Town of Rothesay, the Town of Grand Bay-Westfield and the Town of Hampton (collectively, the "**Founding Members**"), to promote economic development and otherwise give effect to the obligations, responsibilities, goals and objectives described in the articles of incorporation of the Agency and herein.
- C. The Founding Members and the Agency entered into a Members' Agreement, dated March 25, 2021 (the "**Members Agreement**").

- D. On April 26, 2021, the Agency filed a Certificate of Amendment, pursuant to the **Canada Not-for-profit Corporations Act**, to change its name from the New Regional Economic Development Agency for Greater Saint John to Envision Saint John: The Regional Growth Agency;
- E. On December 17, 2021, the Province of New Brunswick enacted Bill 82, entitled *An Act Respecting Local Governance Reform*, SNB 2021, c 44 (the "**Reform Act**") amending the *Local Governance Act*, SNB 2017, c 18 (the "**LG Act**"), the *Regional Services Delivery Act*, RSNB 2012, c 37 (the "**RSD Act**"), and other related acts and regulations, including the following amendments to the RSD Act, effective January 1, 2023:
- i. the Fundy Regional Services Commission ("**FRSC**") includes the Towns of Grand-Bay Westfield, Hampton, Quispamsis, Rothesay, the Village of Fundy-St. Martins and the City of Saint John, the territorial limits of each being more particularly described in the *Local Governments Establishment Regulation – LG Act*, NB Reg 2022-50, in addition to the Rural District of Fundy, its territorial limits being more particularly described in section 10 of the *Rural Districts Establishment Regulation – LG Act*, NB Reg 2022-45 (the "**FRSC Regions**" and each community therein, collectively, the "**FRSC Members**" or individually an "**FRSC Member**");
 - ii. subsection 3.2(1) of the RSD Act expands the current mandate of the FRSC to require the FRSC to undertake activities related to regional economic development and regional tourism promotion within the FRSC Regions (the "**Economic Development and Tourism Mandate**"); and
 - iii. subsection 6(2) of the RSD Act permits the FRSC to enter an agreement with a third party to provide services on behalf of the FRSC.
- F. On June 10, 2022, the Province of New Brunswick enacted Bill 110, entitled *An Act Respecting Local Governance Reform, 2022*, SNB 2022, c 31, which made certain additional amendments to the **Reform Act**.
- G. On December 21, 2022, the FRSC and the Agency entered a Master Services Agreement which confirms the Agency provides the services and deliverables in connection with the FRSC's Economic Development and Tourism Mandate (the "**MSA**");
- H. While a majority of the FRSC Members were also Founding Members, Fundy-St.Martins (the "**FRSC New Member**") was not a Founding Member, as defined in the Members Agreement;
- I. By virtue of this Amended and Restated Members Agreement, the FRSC New Member is joining the Agency as a Member;
- J. As a result of the foregoing, the Members are desirous of amending and restating the Members Agreement as follows:

NOW THEREFORE THIS AGREEMENT WITNESSES THAT in consideration of the respective covenants and agreements herein contained and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the Parties, intending to be legally bound, hereby agree as follows:

ARTICLE 1
INTERPRETATION

1.1 Definitions

For the purposes of this Agreement the following terms shall have the respective meanings set forth below and grammatical variations of such terms shall have corresponding meanings:

“**Accommodation Levy**” means an accommodation levy collected under the authority of an Accommodation Levy By-Law.

“**Accommodation Levy By-Law**” means a by-law under section 101.1 of the *Local Governance Act*, SNB 2017, c 18, consistent with the requirements of Section 5.2, providing the collection of a 3.5% levy against the purchase price charged to any guest of any premises operated to provide, for remuneration, temporary sleeping accommodation for the public for a continuous period not exceeding 31 days, and includes hotels, motels, inns, bed and breakfasts, resorts, hostels, campgrounds consisting of tents, yurts, cabins and trailer sites, buildings owned or operated by a post-secondary institution, any other facility or building which contains rooms offered as accommodations or rental units and dwelling units that are offered as lodgings.

“**Act**” has the meaning set forth in Recital A.

“**Agency**” means Envision Saint John: The Regional Growth Agency

“**Agency Board**” means the board of directors of the Agency.

“**Agreement**” means this unanimous members’ agreement.

“**Business Day**” means any day other than a Saturday, Sunday or statutory holiday in New Brunswick, Canada.

“**By-Laws**” means the by-laws of the Agency.

“**Budgets**” means the Capital Budget and Operating Budget as approved by the Agency Board in accordance with Section 5.4.

“**Capital Budget**” means the annual capital budget of the Agency.

“**Chair**” means the Director appointed by the Agency Board as Chair.

“**Confidential Information**” has the meaning set forth in Section 9.1.

“**Control**” means, with respect to any Person, the possession, directly or indirectly, of the power to elect a majority of such Person’s board of directors or similar governing body, or to direct or cause the direction of the management, business or policies of such Person, through ownership of capital stock issued by a corporation (or equivalent interests in any other Person), the holders of which are ordinarily, in the absence of contingencies, entitled to vote for the election of directors (or Persons performing similar functions) of such Person, even if such right to vote has been suspended by the happening of such contingency, by contract or otherwise; and “**Controlled**” has a corresponding meaning.

“**Director**” means an individual duly elected as a director of the Agency.

“**Dispute**” has the meaning set forth in Section 10.1.

“**Economic Development and Tourism Mandate**” has the meaning set forth in Recital E.

“**Encumbrance**” means any security interest, mortgage, debenture intended as a security device, deed of trust that includes provisions intended as a security device, option, pledge, hypothecation, assignment by way of charge, collateral assignment, charge or deposit arrangement, trust (actual or deemed) intended as a security device, lease intended as a security device, lien (statutory or other), restrictive covenant or other encumbrance or right creating or evidencing an interest in property including those created by, arising under or evidenced by any conditional sale or other title retention agreement.

“**Founding Members**” has the meaning set forth in Recital B.

“**FRSC**” has the meaning set forth in Recital E.

“**FRSC Members**” has the meaning set forth in Recital E.

“**FRSC New Member**” has the meaning set forth in Recital H.

“**FRSC Regions**” has the meaning set forth in Recital G.

“**Funding Plan**” means the plan for funding the Agency through Member contributions, contributions from the Province, private sector support and contributions contemplated from LSDs.

“**HST**” means Harmonized Sales Tax.

“**Interest**” means the membership interests of a Member of the Agency and includes the rights and interests of the Member under this Agreement.

“**KPIs**” means the key performance indicators approved by the Members under Section 5.5.

“**LG Act**” has the meaning set forth in Recital E.

“**Local Government**” means a local government as defined in the LG Act.

“**Material Underperformance**” means an event or instance, as more fully addressed in Section 8.1.

“**Member**” means each of the City of Saint John, Grand Bay-Westfield, Hampton, Quispamsis, Rothesay, and Fundy-St. Martins, and “**Members**” means all of them.

“**MSA**” has the meaning set forth in Recital G.

“**Operating Budget**” means the annual operating budget of the Agency.

“**Other Services and Programs**” means other services and programs as approved by the Agency under Section 4.3.

“**Parties**” means, at any particular time, collectively, each of the signatories to this Agreement and “**Party**” means any of the Parties.

“**Person**” means any individual; any body, public or private, incorporated anywhere in the world; any partnership; any limited partnership; any limited liability company; any unlimited liability company; any other entity formed for business or investment purposes; any joint venture; any trust or unincorporated organization; the Crown or any agency or instrumentality thereof; and any other entity recognized by law.

“**Province**” means the Province of New Brunswick.

“**Reform Act**” has the meaning set forth in Recital E.

“**Region**” means the FRSC Regions.

“**Regional Facilities**” means the following facilities: (i) the Saint John Arts Centre; (ii) the Canada Games Aquatic Centre; (iii) TD Station; (iv) the Imperial Theatre; and (v) the Saint John Trade and Convention Centre.

“**RSD ACT**” has the meaning set forth in Recital E.

“**Strategic Plan**” means the four year strategic plan prepared by the Agency in accordance with Section 5.1.

“**Subsidiary**” means, with respect to any Person, any other Person who, directly or indirectly, is Controlled by such Person.

“**Tax Act**” means the Income Tax Act, R.S.C. 1985, c. 1 (5th Supp.), as the same may be amended, re-enacted or replaced from time to time.

“**Withdrawal Date**” means the effective date of a Member’s withdrawal from this Agreement.

“**Withdrawn Member**” means a Member who has withdrawn from this Agreement pursuant to Section 8.1.

1.2 **Currency**

Unless otherwise indicated, all dollar amounts referred to in this Agreement are expressed in Canadian funds.

1.3 **Sections and Headings**

The division of this Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. Unless otherwise specified, any reference to an Article or a Section refers to the specific Article or Section of this Agreement.

1.4 **Rules of Construction**

In this Agreement:

- (a) the terms “this Agreement”, “hereof”, “herein”, “hereunder” and similar expressions refer to this Agreement and not to any particular Article, Section or other portion of this Agreement;
- (b) words importing the singular number only include the plural and vice versa, and words importing the masculine gender include the feminine and neuter genders and vice versa;
- (c) the words “include”, “includes” and “including” mean include, includes or including, in each case, without limitation;
- (d) reference to any agreement or other instrument means such agreement or other instrument as amended, modified, replaced or supplemented from time to time; and
- (e) whenever any payment to be made or action to be taken hereunder is required to be made or taken on a day other than a Business Day, such payment shall be made or action taken on the next following Business Day.

1.5 Entire Agreement

This Agreement and the other documents referred to herein constitute the entire agreement among the Parties with respect to the subject matter hereof and supersede all prior agreements, understandings, negotiations and discussions, whether written or oral. There are no conditions, covenants, agreements, representations, warranties or other provisions, express or implied, collateral, statutory or otherwise, relating to the subject matter hereof except as provided in this Agreement, such other documents, or any combination thereof.

1.6 Governing Law; Jurisdiction

This Agreement shall be construed, interpreted and enforced in accordance with, and the respective rights and obligations of the Parties shall be governed by, the laws of the Province and the federal laws of Canada applicable therein and, subject to the provisions of Article 10 each Party hereby irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of such Province and all courts competent to hear appeals therefrom.

1.7 Severability

If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such determination shall not impair or affect the validity, legality or enforceability of the remaining provisions hereof and each provision is hereby declared to be separate, severable and distinct. To the extent that any provision is found to be invalid, illegal or unenforceable, the Parties shall act in good faith to substitute for such provision, to the extent practicable under the circumstances, a new provision with content and purpose as close as possible to the provision so determined to be invalid, illegal or unenforceable.

1.8 Amendment

No amendment or modification of this Agreement is effective except by an instrument in writing that is executed and delivered by all of the Parties or if the relevant amendment or

modification exclusively affects rights and obligations between the Members, by all of the Members and is identified as an amendment or modification to this Agreement.

1.9 Waiver

Any Party may extend the time for the performance of any of the obligations owed to such Party by one or more of the other Parties or waive compliance with any of the covenants or performance of any of the obligations owed to such Party by one or more of the other Parties or any of the conditions to performance of such Party's obligations contained herein. Any such extension or waiver is valid only if such extension or waiver is set forth in an instrument in writing that is executed and delivered by the Party to be bound thereby and is expressly identified as an extension or waiver hereunder. The failure or delay of any Party to assert any of its rights hereunder does not constitute a waiver of any of such rights. Any failure or delay of any Party to enforce any of the provisions of this Agreement or to require compliance with any of its terms does not in any way affect the validity of this Agreement, or any part hereof, and is not to be deemed to be a waiver of the right of such Party thereafter to enforce any and each such provision. Each Party may give or withhold its consent in its sole discretion, unless this Agreement expressly provides for a different standard in a given instance.

ARTICLE 2 **REPRESENTATIONS AND WARRANTIES**

2.1 Representations and Warranties of Members

Each of the Members hereby represents and warrants to each of the other Parties hereto that as at the date of its execution and delivery of this Agreement:

- (a) such Member has the full power, authority and legal right to execute and deliver this Agreement and to perform its obligations hereunder; and
- (b) this Agreement has been duly authorized, executed and delivered by such Member and constitutes a legal, valid and binding obligation of such Member, enforceable against such Member in accordance with the terms hereof.

ARTICLE 3 **MANAGEMENT OF THE AGENCY**

3.1 Management

The Management of the Agency, including the composition of the Agency Board, its committees, and other matter related to governance, will be set out in the Agency's by-laws.

- (a) The Agency Board has an established governance committee that, among other things, nominates individuals for election or appointment as a Director. The Members agree that the Agency's by-laws shall set out that any future Director of the Agency shall be nominated by the governance committee which shall operate with the following procedure:
 - (i) The governance committee shall consider the election or appointment of Directors with a view to ensuring that the Agency Board is comprised of individuals that collectively possess a balance of skills, expertise and

perspectives and is appropriately representative in terms of gender balance and diversity, to contribute to the governance of the Agency and who is an individual that is not an elected representative of a Member or employed by or an agent of any Member.

- (ii) When there is a vacancy in the Directors, or where the governance committee anticipates a vacancy in the Directors, it shall, through a public or other transparent process including, to the extent the governance committee considers advisable in the circumstances through engaging a professional search firm, solicit interest from individuals resident in the Region who are willing to serve as Directors.
 - (iii) The governance committee shall assess the candidates against the Agency's skills matrix and shall nominate a suitably qualified person for each vacancy taking into account the Agency Board's current and future needs and the objective of achieving a high functioning board.
 - (iv) Each Director shall hold office for a term of three (3) years and may be nominated for one (1) subsequent term of three (3) years, at the discretion of the governance committee. No Director shall serve for more than eight (8) consecutive years. Notwithstanding the immediately preceding sentence, a Director who is appointed as Chair may serve for up to two (2) additional three (3) year terms.
 - (v) Where a vacancy on the Agency Board arises and a Director is elected or appointed to fill such vacancy, the term of the Director so elected or appointed shall expire on the date on which the former Director in respect of which the vacancy was created would have expired if that former Director had continued in office.
 - (vi) It is the objective of the Members that the terms of not more than four (4) Directors shall expire at any annual meeting. Upon the entering into of this Agreement, the Members shall, by resolution, on the recommendation of the Agency Board acting on the recommendation of the governance committee, modify the terms of incumbent Directors to give effect to this Section 3.1(a)(vi).
- (b) A Director may resign from the Agency Board by notice to the Chair.
 - (c) Where a Director is to be elected or appointed, the Agency Board shall, on the recommendation of the governance committee, nominate persons for election or appointed as Directors in accordance with the provisions of this Section 3.1 and the Members or, in the case of a vacancy being filled by the Agency Board, the Agency Board, shall elect or appoint the persons so nominated.
 - (d) The chairperson of the advisory committee for Fundy Rural District shall be invited to attend at and participate in meetings of the Agency Board as a non-voting observer.

3.2 Member Designate and Approval Rights

- (a) Each Member shall designate their Chief Administrative Officer or another member of their senior management to act as their representative at all meetings of Members in accordance with section 154(6) of the Act.
- (b) In addition to approval by the Agency Board and any other consent or approval required by law, each of the following shall require the prior approval by a majority vote of the Members:
 - (i) the Budgets;
 - (ii) the Strategic Plan;
 - (iii) the KPIs;
 - (iv) any annual business plan that would have the effect of adding or removing a strategic goal as set out in the Strategic Plan or delay or accelerate the completion of the Strategic Plan by more than one year;
 - (v) any amendment to the By-Laws of the Agency, subject to Section 3.2(c);
 - (vi) the borrowing of any amount, other than credit extended by sellers and amounts charged to credit cards for the purchases of goods and services in the ordinary course within the limits of the approved Budget;
 - (vii) the provision of any guarantee, indemnity or other financial support for the benefit of any Person other than:
 - (A) indemnities provided to Directors of the Agency; or
 - (B) in the ordinary course within the limits of the approved Budget;
 - (viii) any amalgamation, reorganization or arrangement involving the Agency;
 - (ix) the establishment or acquisition of any Subsidiary;
 - (x) the dissolution, liquidation or winding up of:
 - (A) the Agency, or
 - (B) any Subsidiary of the Agency; and
 - (xi) the appointment or dismissal of the auditor of the Agency.
- (c) In addition to approval by the Agency Board and any other consent or approval required by law, any amendment to the articles of incorporation or the By-Laws of the Agency referred to subsection 197(1) of the Act shall require the prior approval by a two-thirds (2/3) majority vote of the Members.

- (d) Any meeting of Members shall be conducted in the manner provided for in the Act and By-laws, provided that:
- (i) at any such meeting, the representative of each Member shall be entitled to
 - (A) one (1) vote; and
 - (B) in the case of a Member that has a population that is more than 10,000 residents, one (1) additional vote for every 10,000 residents of the Member over and above the first 10,000 residents,and, for the purposes of Section 3.2(d)(i)(B), the number of residents of a Member shall be determined in a manner consistent with the RSD Act and the regulations thereunder; and
 - (ii) all decisions of the Members must be made by a resolution passed at a meeting of the Members by an affirmative vote of at least a majority of the Members present or by a resolution in writing signed by the Members in accordance with the Act. In the case of a tie vote, the matter shall be referred to, and determined by the majority vote of, the Agency Board.
- (e) Except as set forth herein, or as may be required by the Act or By-Laws of the Agency, no Member shall have any consent or approval rights in relation to the operation or management of the business of the Agency.

ARTICLE 4 **SERVICES AND PROGRAMS**

4.1 Economic Development Activity Specific to a Member

It is acknowledged and agreed that each of the Members is free to conduct economic development activities specific to their Local Government while continuing to support the efforts of the Agency in the Region.

4.2 Core Services and Programs

The Agency shall be an organization primarily concerned with all aspects of economic growth within the Region. The Agency shall deliver the following Core Services and Programs:

- (a) marketing, promotion and branding;
- (b) people attraction;
- (c) growth sector(s) development;
- (d) tourism development;
- (e) entrepreneurial ecosystem growth;
- (f) economic data/ decision support;

- (g) economic infrastructure development;
- (h) local government economic development; and
- (i) stakeholder relations, ecosystem development and private sector development.

4.3 Other Services and Programs

In addition to the services in Section 4.2, the Agency may provide such Other Services and Programs to Members or other persons as the Agency Board may approve.

4.4 Prioritize Use of Regional Facilities

The Agency shall prioritize the promotion and use of the Regional Facilities.

ARTICLE 5 FUNDING AND FINANCIAL MATTERS

5.1 Strategic Plan

The Agency shall, on a four year cycle, submit to the Members for approval, a strategic plan setting out, for such period, the strategic goals and objectives for the Agency, including anticipated measurable outcomes together with a viable Funding Plan.

5.2 Accommodation Levy

- (a) Each of the Members acknowledges that it has enacted, through the legislated process, an Accommodation Levy By-Law. Each of the Members agrees that it shall use its best efforts to maintain its Accommodation Levy By-Law in full force and effect.
- (b) The Members further agree that the proceeds of the Accommodation Levy shall be transferred to the Agency, less an agreed to five percent (5%) administration fee.
- (c) Each of the Members shall take all reasonable steps to give effect to and enforce their Accommodation Levy by-law.
- (d) If the Accommodation Levy By-Law of any Member is repealed or otherwise rendered invalid or ineffective and such Member does not immediately enact a replacement Accommodation Levy By-Law, that Member shall provide additional funds directly to the Agency in an amount, as agreed to by the Members, that equals to the estimated annual Accommodation Levy that would have been collected by it had it enacted such a by-law. In the event that the Member does not elect to contribute such additional funds, the contributing Members may by majority vote among themselves elect to exclude that Member from any activities of the Agency funded by, or any benefits associated with, the Accommodation Levy resources, including but not limited to, any strategic discussions related to tourism investments, any application of funds or resources arising out of Accommodation Levy, any regional tourism initiatives and any tourism related advertising.

5.3 Other Funding

Financial participation of the Federal and Provincial governments or any other sources, including the private sector, shall be sought from time to time for projects that are consistent with the purpose and objects of the Agency.

5.4 Budgets

On or before June 30th, in each year, the Agency shall submit to the Members a Capital Budget, as required, and an Operating Budget for approval by the Members for the ensuing year.

5.5 KPIs

It is acknowledged by the Agency and the Members that the performance of the Agency, as measured against the KPIs, shall be a critical component to evaluating the effectiveness of the Agency and the Members' satisfaction with the Agency.

5.6 Reports

The Agency shall provide to each Member:

- (a) on a quarterly basis within 30 days of the end of each fiscal quarter, unaudited financial statements for the period along with a report on performance of the Agency against the KPIs during such period; and
- (b) on an annual basis by June 1st of each year, an annual report including
 - (i) audited financial statements;
 - (ii) a report on the performance of the Agency including achievements against the KPIs and the Strategic Plan.

5.7 Meetings

- (a) The Agency shall ensure that following meetings are scheduled annually:
 - (i) a meeting of Members, as set out in Section 5.8;
 - (ii) the public presentation referred to in Section 5.8(b);
 - (iii) a presentation and update on Agency Matters delivered by the Chair and the Chief Executive Officer of the Agency to the local government council of each Member and to the advisory committee for Fundy Rural District; and
 - (iv) quarterly meetings between the Chief Executive Officer of the Agency and the Chief Administrative Officers of the Members or their designates to ensure there is open dialogue and close collaboration among the Members and the Agency with respect to the delivery of the Agency's services and programs.

- (b) The Agency shall provide such other reports or presentations to local government councils as the Members may reasonably request in consultation with the Chair and approved by the Agency Board.

5.8 Annual Meeting

- (a) The Agency shall call an annual meeting of Members in accordance with the provisions of the Act. At each annual meeting of Members:
 - (i) the Agency Board, represented by the Chair, and the Chief Executive Officer, shall provide an update to Members on Agency matters;
 - (ii) the Chair and the Chief Executive Officer of the Agency shall be available to answer questions concerning Agency performance; and
 - (iii) the Budgets, Strategic Plan and KPIs shall be presented for approval in accordance with Section 3.2(b), together with such other business as may be properly proposed for approval by the Members.
- (b) Immediately following the conclusion of an annual meeting of Members, a public presentation and update on Agency Matters shall be presented by the Agency Board, represented by the Chair, and the Chief Executive Officer.
- (c) Nothing in this Section 5.8 affects the rights or obligations of Directors to attend annual meetings of the Members.

5.9 Financing and Borrowing

Any financing or borrowing required by the Agency from time to time shall be raised from such sources and on such terms as may be approved by the Members pursuant to Section 3.2(b)(vi).

5.10 Termination of Funding Agreements

- (a) Saint John and the Agency agree that that certain funding agreement dated April 1, 2021 and effective as of January 1, 2021 entered into between Saint John and the Agency is hereby terminated.
- (b) Grand Bay-Westfield and the Agency agree that that certain funding agreement dated April 1, 2021 and effective as of January 1, 2021 entered into between Grand Bay-Westfield and the Agency is hereby terminated.
- (c) Hampton and the Agency agree that that certain funding agreement dated April 1, 2021 and effective as of January 1, 2021 entered into between Hampton and the Agency is hereby terminated.
- (d) Quispamsis and the Agency agree that that certain funding agreement dated April 1, 2021 and effective as of January 1, 2021 entered into between Quispamsis and the Agency is hereby terminated.
- (e) Rothesay and the Agency agree that that certain funding agreement dated April 1, 2021 and effective as of January 1, 2021 entered into between Rothesay and the Agency is hereby terminated.

- (f) Fundy-St. Martins and the Agency agree that that certain associate agreement dated as of December ____, 2021 entered into between the Village of St. Martins, a predecessor of Fundy-St. Martins, and the Agency, is hereby terminated.

ARTICLE 6 INSURANCE

6.1 Maintain Insurance

The Agency shall at all times maintain in full force and effect insurance, including property and liability insurance and insurance covering errors and omissions, in appropriate amounts and for appropriate risks as would be considered prudent for similar businesses including, without limitation, coverage in accordance with the particulars set out below, such insurance coverage to be funded by, and shall be an expense of the Agency. All policies shall be reviewed by the Agency Board annually and shall not be cancelled or materially amended by the Agency without the prior written approval of the Agency Board. The particulars of such coverage shall be as follows:

- (a) directors and officers liability insurance in such amount as the Agency Board shall from time to time determine acting reasonably;
- (b) general liability insurance coverage, including personal injury, and accidents occurring on its private property, or on premises leased or otherwise controlled by the Agency, in such amounts as determined by the Agency Board; and
- (c) errors and omissions insurance in such amount as the Agency Board shall from time to time determine acting reasonably.

ARTICLE 7 ASSIGNMENT; ADMISSION OF NEW MEMBERS

7.1 No Assignment by Member

A Member may not sell, assign, transfer, pledge, mortgage or otherwise dispose of, whether by merger, operation of law or otherwise all or any of its Interest to any Person.

7.2 New Member

No other Person shall be admitted as a member of the Agency or re-admitted as a member of the Agency after having become a Withdrawn Member, unless:

- (a) it has the affirmative consent of each Member; and
- (b) it becomes a party to this Agreement by executing an accession agreement in such form as is acceptable to the Members.

ARTICLE 8
WITHDRAWAL BY MEMBER

8.1 Withdrawal by Member

A Member may withdraw from the Agency by notice in writing to the Agency, to be effective on the 31st day of December in the year in which such notice is given, provided that such notice is given by the withdrawing Member not later than the 30th day of June in that year.

8.2 Consequences of Withdrawal

Upon withdrawal of a Member, the Withdrawn Member shall have no further rights or obligations as a Member under this Agreement.

ARTICLE 9
CONFIDENTIAL INFORMATION

9.1 Confidential Information

The Agency shall develop a policy which shall guide the determination of which records and information held or created by the Agency are to be treated as confidential (“**Confidential Information**”).

Each Party agrees that it shall not at any time, whether then a Member of the Agency or not, directly or indirectly disclose Confidential Information to any Person (other than the Party’s own professional advisors on a need-to-know basis or another Party hereto) not authorized by the Parties hereto to receive such information or use such Confidential Information for any purpose unrelated to the Agency or this Agreement.

For greater certainty, nothing in this Agreement imposes liability upon any Party for making disclosure of Confidential Information where such disclosure:

- (i) is required by law or court order; or
- (ii) is occasioned through theft, lawful or unlawful search and seizure or through any other means beyond the reasonable control of the Party.

9.2 Right to Information and Protection of Privacy Act

Each of the Parties acknowledge that each Member is subject to the provisions of the *Right to Information and Protection of Privacy Act*, SNB 2009, c R-10.6 and notwithstanding Section 9.1 and any information relating to the Agency in their possession or control is subject to disclosure under that statute.

ARTICLE 10
DISPUTE RESOLUTION

10.1 Best Endeavours to Settle Disputes

If any controversy, dispute, claim, question or difference (a “Dispute”) arises with respect to this Agreement or its existence, interpretation, performance, enforcement, breach, termination or validity, then the Parties involved in the Dispute shall use reasonable efforts to attempt to resolve the Dispute in a collaborative manner as follows:

- (a) through negotiation between the Chief Executive Officer and the manager or equivalent chief administrative employee of the Member or Members involved;
- (b) if, at any time, the dispute remains unresolved, any Party involved in the Dispute may initiate mediation in respect of the Dispute by providing written notice to the other Parties involved to request mediation. Such a request shall include the names of three (3) proposed mediators and if the Parties involved cannot agree on a mediator, either from among the three (3) proposed names or otherwise, within ten (10) Business Days of the receipt of such notice, then the Dispute shall be resolved through arbitration in accordance with Section 10.2;
- (c) the mediator's costs and fees shall be borne equally by the Parties involved;
- (d) the mediator and the Parties involved shall hold mediation within ten (10) Business Days of the mediator's appointment; and
- (e) if mediation is not successful in resolving the Dispute the matter shall be resolved through arbitration in accordance with Section 10.2.

It is acknowledged and agreed by the Agency and the Members that this Article 10 shall have no application to any Dispute arising under Article 8 of this Agreement.

10.2 Arbitration

- (a) If the Parties involved in the Dispute do not reach a resolution of the Dispute pursuant to Section 10.1 within 30 days after written notice of the Dispute has been given by one to the other(s), the Dispute shall be settled by final and binding arbitration in accordance with the provisions of the *Arbitration Act*, SNB 2014, c 100 as in effect from time to time (the "**Arbitration Act**").
- (b) Any Party involved in the Dispute may initiate such arbitration by giving a notice to arbitrate to the other(s) setting out the nature of the Dispute the amount involved, if any, and the remedy sought.
- (c) Unless the Parties agree to arbitration by a sole arbitrator, the arbitration shall be carried out by a tribunal of three arbitrators, one appointed by each Party to the Dispute (and for such purposes, Parties having a common interest shall be treated as a single Party), and the third arbitrator, who shall be chairperson of the tribunal who shall be appointed by the first two appointed arbitrators.
- (d) The arbitration shall be private and confidential and unless otherwise required by law, all hearings, meetings, and communications shall be private and confidential as between the participants and the arbitrators.
- (e) The arbitration hearing shall take place, at a location to be determined by the arbitrators in consultation with the parties thereto.
- (f) The applicable law of the arbitration shall be New Brunswick law.
- (g) The arbitration shall be conducted in English.
- (h) except for any action necessary to enforce the award of the arbitrator, or any actions initiated by any insurer of any Party involved, the provisions of this Section

10.2 are a complete defence to any suit, action nor other proceeding instituted in any court or before any administrative tribunal with respect to the subject matter of the Dispute.

- (i) Unless otherwise required by law, the decision of the arbitrators or sole arbitrator, if applicable, shall be private and confidential between the Members involved in the Dispute and shall not be subject to appeal except to the extent permitted by the *Arbitration Act*, SNB 2014, c 100.

10.3 Time Limits

The time limits referred to in this Article 10 may be abridged or extended by mutual agreement among the Parties involved in the Dispute.

ARTICLE 11 MISCELLANEOUS

11.1 Term; Termination

This Agreement shall first come into force and effect as of the date hereof and, except as provided below, shall continue in force until the earliest of:

- (a) the date on which this Agreement is terminated by written agreement of all Members;
- (b) except in the case of a termination of the MSA contemplated by Section 11.1(c), the date that is six (6) months after the MSA is terminated in accordance with its terms unless, prior to such six (6) month anniversary, this Agreement is amended to provide for funding arrangements to permit the continued operation of the Agency;
- (c) in the event that the MSA is terminated by the FRSC pursuant to either Section 10.3(a) or Section 10.3(b) of the MSA, the date that is six (6) months after the MSA is terminated; and
- (d) the date on which the Agency is dissolved.

A termination of this Agreement or any provision of this Agreement shall not affect or prejudice any provisions hereof which are expressed to survive such termination or any rights or obligations which have accrued or arisen under this Agreement prior to the time of termination, and such rights and obligations shall survive the termination of this Agreement.

11.2 Implementation

Each Member agrees to exercise its influence in respect of the Agency and each Member agrees to sign all such documents and to do and perform all such other acts or things, as may be necessary or desirable from time to time in order to give full effect to the provisions and intent of this Agreement and to ensure that the provisions of this Agreement shall govern the affairs of the Agency to the maximum extent permitted by law.

11.3 Notices

[NTD: Update Notice Contact info. as required]

- (a) All notices, requests, claims, demands and other communications hereunder must be in writing and are sufficiently given if delivered personally, by registered mail (postage pre-paid, return receipt requested), by a recognized overnight delivery service or by facsimile, email or other electronic transmission (provided however, that email or other electronic transmission is not sufficient delivery if no email address is included herein), directed as follows (or, in the case of any Member, to such other address as the Agency shall have on record for such Member):
- (i) to The City of Saint John:
15 Market Square, PO Box 1971 Saint John, NB E2L 4L1
Attention: Office of the Common Clerk
E-mail: cityclerk@saintjohn.ca
 - (ii) to Grand Bay-Westfield:
609 River Valley Drive
PO Box 3001
Attention: Office of the CAO
E-mail: john@towngbw.ca
 - (iii) to Hampton:
648 Main St, PO Box 1066 Hampton, NB E5N 8H1
Attention: Office of the CAO
E-mail: richard.malone@townofhampton.ca
 - (iv) to Quispamsis:
12 Landing Court Quispamsis, NB E2E 4R2
Attention: Office of the CAO
E-mail: sdeuville@quispamsis.ca
 - (v) to Rothesay:
70 Hampton Road Rothesay, NB E2E 5L5
Attention: Office of the Town Clerk
E-mail: maryjanebanks@rothesay.ca
Attention: Office of the CAO
Email: johnjarvie@rothesay.ca
 - (vi) to Fundy-St. Martins:
 -
 - Attention: ●
 - E-mail: ●
 - (vii) to the Agency
Envision Saint John: The Regional Growth Agency
1 Germain Street, Suite 1600 Saint John, NB E2L 4V1
Attention: Interim Chief Executive Officer
E-mail: andrew.beckett@envisionsaintjohn.com

- (b) Each such notice, request, claim, demand or other communication is deemed to have been received upon the earliest to occur of (i) actual delivery, (ii) in the case of registered mail, 5 Business Days after being deposited in the mail addressed as aforesaid, (iii) in the case of facsimile, e-mail or other electronic transmission, on the next Business Day following the date of transmission (provided that the original of such notice, request, claim, demand or other communication is promptly sent by overnight delivery service as aforesaid) and (iv) in the case of overnight delivery service, one Business Day after being sent addressed as aforesaid. The Parties may designate additional addresses, facsimile numbers or e-mail addresses for particular communications as required from time to time, and may change any address, facsimile number or e-mail address upon 5 Business Days' prior notice thereof.

11.4 Enforceability

Subject to the provisions hereof, this Agreement shall be binding on and enforceable by the Parties and their respective successors (including any corporation continuing from an amalgamation involving a Party).

11.5 Force Majeure

It is acknowledged and agreed that no party under this Agreement shall be held responsible for damages caused by delay or failure to perform its undertakings under the terms of the Agreement when the delay or failure is due to a Force Majeure Event. For the purposes hereof, "**Force Majeure Event**" includes but is not limited to any war, invasion, insurrection, armed conflict, act of foreign enemy, revolution, terrorist act, pandemic, interference by military authorities, nuclear explosion, contamination by ionizing radiation, epidemic, quarantine restriction, fire, strike, flood, earthquake, hurricane, act of God, lawful act of a public authority (other than a party that is a public authority seeking the benefit of this Section 11.5) or delay or default caused by common carriers, which cannot be reasonably foreseen or provided against, that prevents, delays or interrupts the performance of any obligation under this Agreement, and provided such event does not occur by reason of:

- (a) the negligence of the party relying on the Force Majeure Event (or those for whom it is in law responsible); or
- (b) any act or omission of the party relying on the Force Majeure Event (or those for whom it is in law responsible) that is in breach of the provisions of this Agreement.

In no event shall the prevention, delay or interruption of the performance of any obligation to pay any money satisfy the foregoing definition of "Force Majeure Event", except in the case of a prevention of the performance of an obligation to pay that arises as a direct result of legislation enacted by the Legislative Assembly of New Brunswick that permanently and definitively prevents such performance.

If a Party wishes to claim protection in respect of an Force Majeure Event, it shall as soon as possible following the occurrence or date of commencement of such Force Majeure Event and in any event no later than ten (10) days after the commencement of the Force Majeure Event, notify the other Parties of the nature and expected duration and effect of such Force Majeure Event upon the performance of such Party's obligations and shall thereafter keep the other Parties informed until such time as it is able to perform its obligations. The Party claiming the Force Majeure Event shall use its commercially

reasonable endeavours to: (a) overcome the effects of the Force Majeure Event; (b) mitigate the effect of any delay occasioned by any Force Majeure Event; and (c) ensure resumption of normal performance of this Agreement as soon as reasonably practicable and shall perform their obligations to the maximum extent practicable, provided that neither Party shall be obliged to settle any strike, lock out, work stoppage, labour dispute, or such other industrial action by its employees.

11.6 Remedies

Each Party acknowledges that a violation of any provision of this Agreement shall result in immediate and irreparable harm to the other Parties which cannot be compensated adequately by recovery of damages alone and agrees that, in the event of any such violation or threatened violation, the other Parties shall, in addition to any other rights or remedies available at law, in equity or otherwise, be entitled to temporary and permanent injunctive relief, specific performance and other equitable remedies.

11.7 Counterparts

This Agreement may be executed in counterparts, each of which shall constitute an original and all of which taken together shall constitute one and the same instrument.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first written above and affixed their respective corporate seals.

THE CITY OF SAINT JOHN

By: _____

Name:

Title: Mayor

By: _____

Name:

Title: Clerk

GRAND BAY-WESTFIELD

By: _____

Name:

Title: Mayor

By: _____

Name:

Title: Clerk

HAMPTON

By: _____

Name:

Title: Mayor

By: _____

Name:

Title: Clerk

QUISPAMIS

By: _____

Name:

Title: Mayor

By: _____

Name:

Title: Clerk

ROTHESAY

By: _____

Name:

Title: Mayor

By: _____

Name:

Title: Clerk

FUNDY-ST. MARTINS

By: _____

Name:

Title: Mayor

By: _____

Name:

Title: Clerk

**ENVISION SAINT JOHN: THE REGIONAL
GROWTH AGENCY**

By: _____

Name:

Title: Chair

By: _____

Name:

Title: CEO



2024April29SpecialMeetingFINALweb_028

ROTHESAY

INTEROFFICE MEMORANDUM



TO	:	Mayor Grant & Council
FROM	:	John Jarvie
DATE	:	26 April 2024
RE	:	Dobbin Street Agreement – A.E. McKay et al

Recommendation:

It is recommended Council approve a change to the development agreement for Dobbin Street to remove PID 30354948 and reduce the allows total number of residential units to 100.

Background

In January Council approved revisions to the development agreement for the Dobbin Street extension area. The agreement was originally with a numbered company, subsequently acquired by A.E. McKay Builders and finally brought forward for changes primarily related to consolidating several small buildings into a 56 unit apartment and increasing the size of one of the other buildings to a 29 unit apartment building. This was enabled by the application of density bonusing for the 56 unit.

When drafting the agreement staff incorporated most of the original property identifiers from the original 2015 agreement. However a 24 unit apartment building had already been sold to a third party. (This 24 unit building was the same size in the original agreement.) Consequently the land registry would not accept the agreement since the signature of one of the owners was missing.

To resolve this administrative concern we propose that a new agreement be prepared with the property of that owner deleted and the number of units reduced form 124 to 100. The original 2015 agreement would remain on that parcel. We believe this retains the intention of the January Council motion with respect to agreement revised in January but resolves the matter of the new owner. Although this might be considered an administrative matter we are bringing it to Council for confirmation.
