

ASHCROFT INDIAN BAND

ECONOMIC DEVELOPMENT POLICY

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ASHCROFT INDIAN BAND
ECONOMIC DEVELOPMENT POLICY

1. PURPOSE OF THE POLICY

- 1.1 **Economic Development:** The Band has had success in economic development, by establishing as businesses of the Band an automotive service station and a franchise restaurant, both located in the Ashcroft Travel Center on Ashcroft Indian Reserve No. 4.
- 1.2 **Success:** This success of the Band has been created by many years of hard work, together with the entrepreneurial drive, of its Band members and employees.
- 1.3 **Purpose:** Now that a foundation for successful economic development has been established by the Band, for the benefit of all Band members, it is in the best interest of the Band to establish this policy to:
- (a) foster the entrepreneurial spirit and business experience of all Band members and employees;
 - (b) provide clear guidelines allowing Band members and employees to go forward with their own business ventures, without interfering or conflicting with any duties and responsibilities they have to the Band;
 - (c) identify for Band members and employees the legislation of other governments that is in place which can affect the relationship between business ventures of Band members or employees, and their duties and responsibilities to the Band; and
 - (d) support economic self-sufficiency for all Band members.
- 1.4 **Warning:** This Policy warns all Band members and employees that entities wishing to obtain or retain business with the Band may first or at the same time seek to do business with a Council Member or Senior Official, to:
- (a) influence that Council Member or Senior Official in his or her official capacity with the Band;

- (b) induce that Council Member or Senior Official to do or omit to do an act in violation of his or her lawful duty to the Band; or
- (c) secure any improper advantage in order to assist in obtaining or retaining business with the Band, or directing business of the Band to any person.

2. APPLICATION OF POLICY

2.1 Resolving Conflicts: This Policy is to be read together with any Band policies dealing with:

- (a) fiduciary duties of Council Members and Senior Officials;
- (b) conflicts of interest; and
- (c) the standard of care of Council Members and Senior Officials;

and in the event of any conflict with any other Band policies, this Policy shall prevail.

2.2 Band Members or Employees: This Policy applies to all persons who are either Band members or employees, of either the Band or any Band entity.

2.3 Independent Contractors: This Policy does not apply to independent contractors of the Band, unless any Band member or employee has an ownership interest in that independent contractor.

2.4 Publicly Traded Securities: Securities owned by any Band member or employee in any company which is publicly traded on any stock exchange, are not subject to this Policy.

2.5 Incidental, Periodic or Odd Jobs: Band members who provide contract services to the Band for maintenance, cleaning, clearing, painting, repairs, wood cutting or splitting, or other incidental, periodic or odd jobs around the reserve lands or within the traditional territory of the Band, from time to time, for the Band, and who are not either:

- (a) employees of the Band; or
- (b) Council Members;

are not required under this Policy to disclose those contracts to the Band.

3. DEFINITIONS AND INTERPRETATION

3.1 Definitions: For the purposes of this Policy,

- (a) **“acquired business”** has the meaning set out in section 9.13;
- (b) **“acquisition notice”** has the meaning set out in section 9.12;
- (c) **“approved business entity”** means a business entity, in which a Council Member or Senior Official has any ownership interest, and which has received the approval required under section 7.4;
- (d) **“approved exit strategy”** has the meaning set out in section 9.10;
- (e) **“Band”** means the Ashcroft Indian Band, and includes any Band entities;
- (f) **“Band employee”**:
 - (i) means the employees at any time working for the Band or any Band entity, whether full time, part time, on fixed term or month to month contracts, on a temporary basis, or as casual relief; and
 - (ii) includes the Senior Officials;

but does not include independent contractors of the Band or any Band entity;
- (g) **“Band entity”** means any entity:
 - (i) in which the Band has an ownership interest, sufficient to give the Band the legal right to elect, appoint or otherwise choose a majority of the members of the governing body for that entity; or
 - (ii) which is consolidated with the Band for financial statement reporting purposes;
- (h) **“Band member”**:
 - (i) means any person whose name appears on the membership list maintained by the Band, or who is entitled to have his or her name appear on that list; and
 - (ii) includes the Council Members;

- (i) **“broad consensus”** means a consensus or agreement among the General Band Membership either for or against a matter, determined in accordance with the custom of the Band;
- (j) **“business associate”** has the meaning set out in section 9.10;
- (k) **“business day”** means any day other than a Saturday, Sunday or a statutory, indigenous or civic holiday, in British Columbia, Canada;
- (l) **“business entity”**:
 - (I) means an entity established for the purpose of carrying on business, in which a Band member or employee has any ownership interest; and
 - (II) includes approved business entities;
- (m) **“Business Partner of the Band”** means any entity proposing, negotiating for or having made a business transaction with the Band, in which entity the Band does not have any ownership interest;
- (n) **“Chief and Council”** means the council established or chosen by the Band from time to time, consisting of a chief and councillors, exercising legal authority as the governing body of the Band;
- (o) **“common law relationship”** means a marriage-like relationship in which there is conjugal cohabitation for a continuous period of at least one year;
- (p) **“confidential information”** means information that could possibly harm the interests of individuals or the Band if disclosed to persons not authorized by Band bylaws, policies or procedures to access that information;
- (q) **“conflict of interest”** means any situation where the private interest of a Council Member, Senior Official, Band member or employee may conflict with his or her duty to the Band;
- (r) **“control”** means having an ownership interest, sufficient to give a person and his or her immediate family members, the legal right to elect, appoint or otherwise choose a majority of the members of the governing body for that entity;
- (s) **“Council Member”** means any of the chief or councillors of the Band;

- (t) **“Council Resolution”** means a resolution consented to by the Chief and Council at a meeting duly convened and held, which resolution is then recorded in writing and signed by a quorum of Council Members;
- (u) **“Disputes”** has the meaning set out in section 17.1.
- (v) **“entity”** means a society, corporation, trust, partnership, joint venture, or any unincorporated association or organization;
- (w) **“exit agreement”** has the meaning set out in section 9.11;
- (x) **“exit strategy”** has the meaning set out in section 9.4;
- (y) **“fair market value”** means the highest price available in an open and unrestricted market between informed and prudent parties, acting at arm’s length and under no compulsion to act, expressed in terms of money or money’s worth;
- (z) **“FNFTA”** means the *First Nations Financial Transparency Act* of Canada;
- (aa) **“General Band Membership”** means all persons whose names appear on the membership list maintained by the Band, or who are entitled to have their names appear on that list, and who are 18 years of age or older;
- (bb) **“good faith”** means having a reasonable basis for believing one is doing the right thing at the relevant time.
- (cc) **“immediate family member”** means:
 - (i) a husband, wife, sister, brother, mother, father, daughter, son, ward, grandmother, grandfather, granddaughter, grandson, first uncle, first aunt, or first cousin of a person; and
 - (ii) any other relative living in the same dwelling as a person for a continuous period of at least one year;
 provided that:
 - (iii) the persons described in paragraph (i) may be in law, step, adopted, or common law relatives of that person; and

- (iv) any relationship within the members of the family group of a person can be by blood, marriage, adoption, or common law relationship;
 - (dd) **“INAC”** means the Department of Indigenous and Northern Affairs of the Government of Canada, or any successor department or division of that government exercising jurisdiction over indigenous affairs, including the Departments of Crown-Indigenous Relations and Northern Affairs, and Indigenous Services;
 - (ee) **“key person”** has the meaning set out in section 9.4;
 - (ff) **“ownership interest”** means any equity, shares, stock, partnership units or rights, membership rights, beneficial interest, share of profits or revenues, or other property right, and includes any such interest, property or right whether owned directly or by an immediate family member;
 - (gg) **“purchase price”** has the meaning set out in section 9.13;
 - (hh) **“Qualifications”** means a written statement of any education, certification, or experience required for any Band member or employee to apply for a business opportunity;
 - (ii) **“remuneration”** means any salaries, wages, commissions, bonuses, fees, honoraria, dividends or other monetary benefits from an office or employment, other than the reimbursement of expenses;
 - (jj) **“Senior Official”** means the Band Manager, the Finance Manager of the Band, the managers of any Band entities, and any other positions within the Band designated by Council Resolution as Senior Official positions for the purpose of this Policy; and
 - (kk) **“traditional territory”** means that portion of the traditional territory of the Nlaka’pamux Nation which the Band administers.
- 3.2 **Headings:** Headings inserted in this Policy are for convenience of reference only, and in no way define, limit or enlarge the scope or meaning of this Policy or any provision.
- 3.3 **Issuing Authority:** This Policy is issued under the authority of the Chief and Council of the Ashcroft Indian Band, following consultation with the General Band Membership.

3.4 **Amendments to Policy:** This Policy may be amended, revoked or replaced, either in whole or in part, by Chief and Council, following consultation with the General Band Membership.

3.5 **Amendment and Replacement of Laws:** Reference to any Band bylaw, policy or procedure includes that item as amended or replaced from time to time.

4. **PRINCIPLES**

4.1 **Band Does Not Consult:** Neither the Band nor any Band entity is in the business of consulting with or providing advice to any First Nation, other government, entity or person about economic development, First Nations governance, or any other subject matter.

4.2 **Ownership or Control:** The Band shall not under any circumstances, have any ownership interest or exercise any control, over any business entity or approved business entity.

4.3 **Contracting Out Governance Function:** The Band shall not contract out any of its governance functions to any Band members or employees, or other persons or entities, other than to a tribal council consisting of First Nations sharing a common ancestral or traditional heritage with the Band.

4.4 **Contracting Out Economic Development Functions:** The Band may contract out its economic development functions to any Band members or employees, or other persons or entities, but only in accordance with this Policy.

4.5 **Doing Business with Band Members and Employees:** The Band shall not do business with Band members or employees, or the immediate family members of either, except in accordance with the express provisions of this Policy.

4.6 **Not Competing:** Council Members, Senior Officials, Band members or employees will not have any ownership interest, management or governance function, employment, office, consulting or independent contract work with any entity that carries on any business in competition with any business carried on either by the Band or a Band entity.

4.7 **Business Combinations:** The Band recognizes that certain business opportunities that come its way will not succeed except through a combination of:

- (a) the resources of the Band, including without limitation, its reserve lands, traditional territory, access to government funding, credit rating, political networks, and governance function; and

- (b) the education, credentials, training, work ethic, and business and political experience of its Band members and employees.

4.8 **Sharing Business Opportunities:** The Band recognizes that certain business opportunities that come its way will not succeed except:

- (a) if the opportunity is shared with other entities or persons, including Band members or employees, so that the necessary combination of skills, experience, resources and connections required for success is obtained; and
- (b) where the sharing is done by the Band for sound business reasons, following the processes laid out in this Policy.

4.9 **Governance Authority:** Chief and Council has overall governance authority, which includes all economic development activities, for the Band and all Band entities.

4.10 **Confidential Information:** Confidential information about the Band, Band members, employees, business entities and business opportunities will only be disclosed as necessary to complete the processes laid out in this Policy.

4.11 **Fair and Reasonable:** Any business transaction between the Band, and any Band member, Band employee or business entity, authorized under this Policy:

- (a) must be fair and reasonable to the Band at the time it is approved by Chief and Council; and
- (b) shall be at fair market value, established:
 - (i) as the average of three written quotes from reputable businesses capable of providing the equivalent quality of product or service, within the time required by the Band; and failing that
 - (ii) as directed by either the Band Manager, or the Finance Manager of the Band.

4.12 **Disclosure Requirements Apply:** The disclosure requirements of this Policy apply even if the particular business transaction with the Band is one that, in the ordinary course of business for the Band, would be approved by a Senior Official and would not require approval by Chief and Council.

4.13 **Immediate Family Members:** This Policy applies to each Council Member, Senior Official, Band employee or Band member regarding each of his or her immediate family members.

- 4.14 **Outside Work:** Council Members and Senior Officials shall not accept any other office, employment or independent contractor work, outside the Band, without the prior written consent of Chief and Council, which may be withheld in its discretion, considering whether satisfactory performance by that Council Member or Senior Official, as the case may be, of the terms and conditions of the office or employment, is likely to be affected.
- 4.15 **Additional Consents:** The written consent of Chief and Council under section 4.14 is in addition to any other written consents of Chief and Council, required by a Council Member or Senior Official, under any of:
- (a) Article 6, Conflict of Interest Rules for Business Entities;
 - (b) Article 7, Additional Requirements for Band Government Officials;
 - (c) Article 8, Band Business Opportunity; or
 - (d) Article 9, Exit Strategy for Band Government Officials.

5. LEGISLATION APPLICABLE

- 5.1 **Anti-Corruption Statutes:** Band members or employees proposing to carry on business, either with the Band or with a Business Partner of the Band, are advised that there can be intense legal and financial examination of any and all transactions carried out, which examination can be under any of the following statutes:
- (a) the *Foreign Corrupt Practices Act* of the USA;
 - (b) the *Bribery Act 2010* of the UK;
 - (c) the *Criminal Code* of Canada;
 - (d) the *Extractive Sector Transparency Measures Act* of Canada; or
 - (e) the *First Nations Financial Transparency Act* of Canada;

and which examination can be directed to bribery, corruption, fraud on a government such as the Band, breach of trust, secret commissions, or other offences.

- 5.2 **Effect of the Anti-Corruption Statutes:** The anti-corruption statutes referred to in section 5.1:

- (a) each examine payments made to government officials, which in the case of the Band, means the Council Members or the Senior Officials, who are capable of acting on behalf of the Band in an official capacity;
- (b) include substantial criminal and/or civil penalties; and
- (c) can create a substantial compliance obligation and expense for the Band, even where there has been no wrongdoing by the Band, any Council Member or any Senior Official.

5.3 **Complying with the Anti-Corruption Statutes:** By reason of the anti-corruption statutes referred to in section 5.1, Council Members and Senior Officials shall not:

- (a) receive any remuneration, money, money's worth or other financial consideration of any nature or kind, in any personal or business capacity, either from the Band, any Business Partner of the Band or any other person or entity; or
- (b) carry on business in any personal or business capacity either with the Band, any Business Partner of the Band, or any other person or entity whatsoever;

over and above their office or employment with the Band, except in accordance with Articles 6, 7, 8 or 9.

5.4 **First Nations Financial Transparency Act:** The *First Nations Financial Transparency Act* of Canada ("**FNFTA**"):

- (a) requires that the remuneration and expenses paid to each Council Member, either by the Band or by any entity which is consolidated with the Band for financial statement reporting purposes, be publicly disclosed for each fiscal year ending March 31st, of the Band; and
- (b) defines "remuneration" to include any "monetary benefit".

5.5 **Fair Market Value:** Any transaction between the Band and any one or more of its Council Members, authorized under Articles 7, 8 or 9 this Policy, shall be at fair market value, established in accordance with section 4.11, and will be disclosed in the Band financial statements.

6 CONFLICT OF INTEREST RULES FOR BUSINESS ENTITIES

6.1 **Business Entities-Band Members or Employees:** For any business entity which proposes to carry on any business either with:

(a) the Band; or

(b) a Business Partner of the Band;

each Band member or employee who has any ownership interest in the business entity, must first by written notice to the Chief and Council disclose:

(c) the names of the Band members or employees, any immediate family members, and all other persons, having an ownership interest in the business entity, and the proportion of the total ownership interest held by each;

(d) the names of all persons responsible for the management and governance of the business entity; and

(e) the business proposed to be carried on by the business entity and whether with:

(i) the Band; or

(ii) a Business Partner of the Band.

6.2 **Other Information or Documents:** The Band member or employee will provide Chief and Council with any other information or documents about the ownership, management or legal structure of the business entity, or the business proposed to be carried on, as required by Chief and Council.

6.3 **Process Under Article 11:** Following written disclosure to Chief and Council under sections 6.1 and 6.2 , Chief and Council shall proceed under Article 11 to decide the matter.

6.4 **Band Council Resolution Required:** The business entity shall not carry on with the proposed business as disclosed to the Band under sections 6.1 and 6.2, without the consent of the Band by way of a Council Resolution.

6.5 **Notice of any Change:** A Band member or employee is entitled to rely on a general disclosure in writing to the Band made under sections 6.1 and 6.2, of his or her interest in a business proposed to be carried on, referred to in those sections, provide that on any change in either:

- (a) any of the ownership interests in the business entity;
- (b) the control of the business entity;
- (c) the persons responsible for management and governance of the business entity;
or
- (d) the nature or scope of the business proposed to be carried on, either with the Band or a Business Partner of the Band;

the Band member or employee shall immediately give the Band a written notice of the change.

- 6.6 **Clarification:** The disclosure obligation under section 6.1 for a Band member or employee, also applies for any business entity in which the ownership interest is held directly by an immediate family member, so that the Band member or employee has no direct ownership interest.

7 **ADDITIONAL REQUIREMENTS FOR BAND GOVERNMENT OFFICIALS**

- 7.1 **Business Entities-Council Members or Senior Officials:** For any business entity:

- (a) about which the written disclosure is required to be made to Chief and Council under sections 6.1 and 6.2; and
- (b) in which a Council Member or a Senior Official has any ownership interest;

this Article 7 applies.

- 7.2 **Additional Requirements:** For any business entity to which this Article 7 applies, then in addition to all the requirements of Article 6:

- (a) that business entity must have limited liability either as a corporation, a limited partnership or a limited liability partnership; and
- (b) each Council Member or Senior Official who has any ownership interest in the business entity must disclose to Chief and Council:
 - (i) all constitutional documents for the business entity; and

- (ii) proof of registration and good standing of the business entity at the Registrar of Companies for the Province of British Columbia.

7.3 **Process Under Article 11:** Following the written disclosure to Chief and Council required under sections 6.1, 6.2 and 7.2 having been made, Chief and Council shall proceed under Article 11 to decide the matter.

7.4 **Approved Business Entity:** Upon approval by Chief and Council by way of Council Resolution, of the written disclosure to Chief and Council made under sections 6.1, 6.2 and 7.2, that business entity in which a Council Member or a Senior Official has any ownership interest:

- (a) shall be an “**approved business entity**”; and
- (b) may carry on with the proposed business transaction.

8 **BAND BUSINESS OPPORTUNITY**

8.1 **No Diversion of Band Business Opportunities:** Council Members or Senior Officials who by virtue of their position with the Band, learn about a business opportunity available to the Band, or which the Band has been seeking or for which it has been negotiating, must allow that opportunity to remain with the Band. They cannot divert in their own favour, any such business opportunity of the Band, except if:

- (a) the Band rejects the business opportunity under section 8.3; and
- (b) they proceed in accordance with this Article.

8.2 **Consequences of Breach:** A Council Member or Senior Official who in breach of section 8.1, diverts in his or her own favour any business opportunity of the Band, is:

- (a) acting in conflict between personal interest and duty to the Band; and
- (b) in breach of his or her fiduciary duty to the Band; and

will be liable to account to the Band for any profit or other gain made as a result.

8.3 **Business Opportunity Rejected by the Band:** If Chief and Council, acting in good faith, on full information, and the Band’s best interests, rejects a business opportunity on behalf of the Band, that opportunity may be available to all Band members and

employees. In such circumstances, Council Members and Senior Officials must scrupulously avoid using any confidential information or other Band resources available to them in their official capacities.

8.4 Disclosure: A Council Member or Senior Official who wishes to pursue a Band business opportunity in his or her private capacity should:

- (a) promptly, fully and completely disclose to Chief and Council in writing his or her interest in the opportunity, together with the names of any third parties with whom he or she intends to share that opportunity; and
- (b) leave the room:
 - (i) during any discussions in which Chief and Council considers the Council Member's or Senior Official's written disclosure, and decides whether the Band shall itself pursue the opportunity, or wishes for demonstrated business reasons to reject the opportunity;
 - (ii) while Chief and Council votes on the matter referred to in paragraph (i);
 - (iii) during any discussion in which Chief and Council considers permitting any interested Band members or employees, including the Council Member or Senior Official raising the matter, to privately pursue the opportunity;
 - (iv) determines the fair market value, if any, payable to the Band, for the opportunity; and
 - (v) while Chief and Council votes on the matter referred to in paragraphs (iii) and (iv)

8.5 Absence Recorded in Minutes: Chief and Council shall ensure that the temporary absence of the Council Member or Senior Official raising the matter, during discussion and voting on the matter by Chief and Council under section 8.4, is recorded in writing in the minutes of the Chief and Council meeting.

8.6 Band Members or Employees Pursuing Band Business Opportunity: If Chief and Council grants written permission under subsection 8.4(b) for any interested Band members or employees, in addition to the Council Member or Senior Official raising the matter, to privately pursue the Band business opportunity, then:

- (a) written notice of:
 - (i) the opportunity;
 - (ii) the fair market value, if any, payable to the Band, for the opportunity; and
 - (iii) the Qualifications

shall be given by the Band to all Band members and employees;

- (b) the written notice to all Band members and employees shall specify the deadline for the application to be made by any Band member or employee interested, to the Band, which shall be within 14 days following receipt by that Band member or employee of the notice;
- (c) Chief and Council shall decide, after giving each applicant an opportunity to be heard in person, and on the basis of the applications received, which Band members or employees, if any, have the necessary Qualifications, and are entitled to privately pursue that business opportunity which the Band has rejected; and
- (d) written notice of the decision of Chief and Council shall be given to all Band members and employees.

8.7 Disclosure Regarding Immediate Family Members: The written disclosure to be made to Chief and Council under section 8.4, by a Council Member or Senior Official, includes disclosure of the interest of any immediate family member, in pursuing a Band business opportunity.

8.8 Process Under Article 11: Chief and Council shall proceed under Article 11 in deciding all matters under this Article 8.

9 EXIT STRATEGY FOR BAND GOVERNMENT OFFICIALS

9.1 Sections 8.1 and 8.2 Apply: The principles in sections 8.1 and 8.2 apply to this Article 9.

9.2 Council Member Disclosure of Exit Strategy: A Council Member may give to Chief and Council a written disclosure that his or her participation in an official capacity in a

business opportunity of the Band will be on the condition that if he or she does not run or is not re-elected to Chief and Council in the next election by the General Band Membership, that Council Member may at that time activate an exit strategy for that Band business opportunity, to acquire that opportunity from the Band.

- 9.3 **Senior Official Disclosure of Exit Strategy:** A Senior Official may give to Chief and Council a written disclosure that his or her participation in an official capacity in a business opportunity of the Band will be on the condition that if his or her employment by the Band is terminated without cause, either by the Band or by the Senior Official, at any time, that Senior Official may at that time activate an exit strategy for that Band business opportunity, to acquire that opportunity from the Band.
- 9.4 **Exit Strategy:** Written disclosure from a Council Member under section 9.2, a Senior Official under section 9.3, or a Band member or employee under section 9.9, received by Chief and Council, of an exit strategy by that person for a Band business opportunity, is in this Policy referred to as an “**exit strategy**”. The Council Member or Senior Official giving any such notice is referred to as the “**key person**”.
- 9.5 **Exit Strategy Contents:** The exit strategy given by a key person to Chief and Council in accordance with section 9.4 shall fully and completely disclose in writing both the interest of that key person in that Band business opportunity, together with the names of any third parties with whom that key person intends to share that opportunity.
- 9.6 **Considerations for Chief and Council:** Chief and Council shall upon receipt of an exit strategy from a key person, consider:
- (a) whether that Band business opportunity can be turned into a successful business venture by the Band without considerable extra unpaid work by that key person on behalf of the Band, over and above his or her existing duties and responsibilities;
 - (b) whether that Band business opportunity can be turned into a successful business venture by that key person, if he or she acquires that business opportunity from the Band during the development process;
 - (c) the unpaid work on behalf of the Band contributed by that key person to other business ventures of the Band;
 - (d) whether that key person will by reason of the nature of the Band business opportunity, hold a license, permit, authorization, tenure or security clearance in his or her personal name, without which the business cannot operate;

- (e) whether that business opportunity can succeed on behalf of the Band without that key person's involvement;
- (f) whether the combination of the education, credentials, training, work ethic, and business and political experience of that key person can be duplicated by any other Council Member, Senior Official, employee or member of the Band;
- (g) whether it is fair to the Band to reward that key person for his or her past unpaid work on behalf of business ventures of the Band, by backing the new business venture financially, when there is an exit strategy in place in favour of that key person, for that business;
- (h) the likelihood while that business opportunity is being developed by the Band, of that key person fully disclosing to Chief and Council any potential conflicts of interest arising between his or her duties and responsibilities to the Band, and his or her potential private interest in that business opportunity;
- (i) following acquisition by that key person of that Band business opportunity under section 9.15:
 - (i) whether any continuing business, employment and contracting opportunities would be available to the Band and the Band membership from that business; and
 - (ii) whether that key person will scrupulously avoid using any confidential information or other Band resources that were available to him or her in his or her official capacity with the Band, prior to the acquisition;
- (j) whether an exit strategy has been received by the Band from more than one key person, for the same Band business opportunity;
- (k) the fair market value to be paid to the Band, if any, for that exit strategy by that key person; and
- (l) any other matters relevant to the Band business opportunity, the exit strategy or the key person.

9.7 **Council Process for Exit Strategy:** Chief and Council shall after considering the matters noted under section 9.6, give the key person an opportunity to be heard in person regarding the exit strategy. That key person shall leave the room:

- (a) during any discussions in which Chief and Council considers the exit strategy of the key person for a Band business opportunity, and decides:
 - (i) whether the Band shall pursue the opportunity, or wishes for demonstrated business reasons to reject the opportunity;
 - (ii) if the Band pursues the opportunity, whether the opportunity will include the exit strategies of the key person and other Band members or employees; and
 - (iii) the fair market value to be paid to the Band, if any, for each exit strategy;
- (b) while Chief and Council votes on the matters referred to in subsection (a);
- (c) during any discussions in which Chief and Council considers permitting any interested Band members or employees, in addition to the key person raising the exit strategy, to propose an exit strategy for that Band business opportunity;
- (d) while Chief and Council votes on the matter referred to in subsection (c);
- (e) during any discussions in which Chief and Council, having rejected the opportunity on behalf of the Band, considers permitting any interested Band members or employees, including the key person raising the matter, to privately pursue that business opportunity under Article 8, without Band involvement in that opportunity; and
- (f) while Chief and Council votes on the matter referred to in subsection (e).

9.8 **Absence Recorded in Minutes:** Chief and Council shall ensure that the temporary absence of the key person raising the exit strategy, during discussion and voting on the matter by Chief and Council under section 9.7, is recorded in writing in the minutes of the Chief and Council meeting.

9.9 **Band Member or Employee Disclosure of Exit Strategy:** If Chief and Council grants written permission under subsections 9.7(c) and (d) for any interested Band members or employees, in addition to the key person raising the exit strategy, to disclose an exit strategy for that Band business opportunity, then:

- (a) written notice of:

- (i) the opportunity;
- (ii) the fair market value, payable to the Band, if any, for the exit strategy; and
- (iii) the Qualifications;

shall be given by the Band to all Band members and employees;

- (b) the written notice to all Band members and employees shall specify the deadline for the disclosure to be made by any Band member or employee interested, to the Band, which shall be within 14 days following receipt by that Band member or employee of the notice;
- (c) Chief and Council shall decide, after giving each applicant an opportunity to be heard in person, and on the basis of the disclosures received, which key persons, Band members or employees, if any, have approved exit strategies, and are entitled to proceed together with the Band on that business opportunity; and
- (d) written notice of the decision of Chief and Council shall be given to all key persons, Band members and employees.

9.10 **Approved Exit Strategy of Business Associate:** An exit strategy of a key person, Band member or employee, if approved by Chief and Council under subsection 9.9(b), for a Band business opportunity, shall be called an “**approved exit strategy**”. That key person, Band member or employee, having an approved exit strategy, shall be called the “**business associate**”.

9.11 **Exit Agreement:** An approved exit strategy shall prior to having any legal effect, be documented in a brief agreement in writing between the Band and the business associate, signed by both parties (the “**exit agreement**”), describing:

- (a) the objective of the Band business opportunity, and the expected benefit to the Band membership;
- (b) what each party is contributing to the Band business opportunity, including the amount to be invested by the Band and for what;
- (c) the work location and travel responsibilities for each party;
- (d) the duties and responsibilities of each party;

- (e) the relevant milestones and timelines;
- (f) the third parties to be dealt with and by which party;
- (g) the fair market value, if any, payable by the business associate, to the Band upon signing the exit agreement, for the approved exit strategy;
- (h) what the business associate will receive from the Band if he or she activates the approved exit strategy; and
- (i) any other considerations listed in section 9.6 which Chief and Council wish addressed.

9.12 **Acquisition Notice:** Once the exit agreement has been signed by the business associate and the Band under section 9.11, the approved exit strategy may be activated by the business associate, after leaving any office or employment with the Band and in accordance with section 9.2 or 9.3, if applicable, by giving written notice to Chief and Council (the “**acquisition notice**”) that he or she is acquiring the business opportunity of the Band, to pursue in his or her private capacity.

9.13 **Purchase Price:** The price to be paid by the business associate to the Band (the “**purchase price**”) for the Band business opportunity (the “**acquired business**”), will be the greater of:

- (a) the fair market value of the interest of the Band in the acquired business; and
- (b) the total amount invested by the Band;

in that business opportunity as at the date of the acquisition notice.

9.14 **Determination of Purchase Price:** The purchase price to be paid by the business associate to the Band for the acquired business shall be as most recently determined by the Band and the business associate in writing as at the end of March, June, September, and December in each calendar year during business development, and failing that shall be determined under Article 17 – Dispute Resolution.

9.15 **Closing of Purchase and Sale:** The closing of the purchase and sale of the acquired business shall take place 90 days following receipt by the Band of the acquisition notice, or on such other date as the parties agree. The place of closing shall be at the Band

administration office. At the closing the parties shall execute and deliver all such documents as are necessary as advised by the Band solicitor, to transfer the acquired business free and clear of all liens, charges and encumbrances to the business associate. Forthwith upon receipt and registration of all documents necessary to so transfer the acquired business, the business associate shall deliver to the Band a bank draft or solicitor's trust cheque, payable to the Band, in the amount of the purchase price, whereupon all rights and liabilities of the Band in the acquired business shall be at an end.

- 9.16 **Disclosure Regarding Immediate Family Members:** The written disclosure to be made to Chief and Council under any of sections 9.2, 9.3 or 9.9, by a Council Member, Senior Official, Band member or employee, as the case may be, regarding an exit strategy, includes disclosure of the ownership interest of any immediate family member, in that exit strategy.
- 9.17 **Process Under Article 11:** Chief and Council shall proceed under Article 11 in deciding all matters under this Article 9.

10 **TIME FOR DISCLOSURE**

10.1 **Early Disclosure:** Disclosure to Chief and Council under:

- (a) sections 6.1 and 6.2 by a Band member or employee who has any ownership interest in a business entity which proposes to carry on any business either with the Band, or a Business Partner of the Band;
- (b) section 7.2 by a Council Member or Senior Official who has any ownership interest in a business entity which proposes to carry on any business either with the Band, or a Business Partner of the Band; or
- (c) section 8.4 by a Council Member or Senior Official who wishes to pursue a Band business opportunity in his or her private capacity;
- (d) section 9.2 or 9.3 by a Council Member or Senior Official, respectively, who wishes to have an exit strategy in place for a Band business opportunity, by which he or she would acquire that opportunity from the Band;

must be made in writing at the Chief and Council meeting in which the business opportunity is first considered, or if the matter arises later, at the first meeting after the matter arises.

- 10.2 **Ownership Interest Arises After Contract Made:** If the ownership interest by a Band member or employee, a Council Member or a Senior Official, as the case may be, in a business entity, arises after the contract is made, either with the Band, or a Business Partner of the Band, the disclosure required under any of sections 6.1, 6.2 or 7.2, as the case may be, must be made in writing at the first Chief and Council meeting after the ownership interest arises.
- 10.3 **Change in Status:** If the individual was not a Band member, Band employee, Council Member or Senior Official when the contract was made between a business entity and either the Band, or a Business Partner of the Band, but later becomes one, the individual must disclose in writing his or her ownership interest in the business entity, at the first Chief and Council meeting after becoming a Band member, Band employee, Council Member or Senior Official.

11 **PROCESS FOLLOWING DISCLOSURE**

- 11.1 **Chief and Council Process:** Following written disclosure to Chief and Council under:
- (a) sections 6.1 and 6.2 by a Band member or employee, who has any ownership interest in a business entity which proposes to carry on any business either with the Band, or a Business Partner of the Band;
 - (b) section 7.2 by a Council Member or Senior Official, who has any ownership interest in a business entity which proposes to carry on any business either with the Band, or a Business Partner of the Band; or
 - (c) section 8.4 by a Council Member or Senior Official, who wishes to pursue a Band business opportunity in his or her private capacity; or
 - (d) section 9.2 or 9.3 by a Council Member or Senior Official, respectively, who wishes to have an exit strategy in place for a Band business opportunity, by which he or she would acquire that opportunity from the Band; or
 - (e) section 9.9 by a Band member or employee, who wishes to have an exit strategy in place for a Band business opportunity, by which he or she would acquire that opportunity from the Band;

and the matter coming before Chief and Council for consideration:

- (f) each person making the disclosure will be given an opportunity to be heard in person by Chief and Council, prior to discussion and voting by Chief and Council; and
 - (g) each person who has made the disclosure, will be asked to leave the room, prior to any discussion or voting by Chief and Council on the matter.
- 11.2 **Hearing Open to Membership:** The hearing by Chief and Council of the matter referred to in section 11.1 shall be open to the General Band Membership, subject to subsection 11.3.
- 11.3 **Hearing in Camera:** Any Band member or employee may at the beginning of the hearing by Chief and Council of the matter referred to in section 11.1, make application to Chief and Council for the hearing to be in camera, that is closed to the General Band Membership. The application can be made on the basis of confidential information to be disclosed to the hearing, or other prejudice to any Band member or employee, or to the Band as a whole, as the case may be, created if the hearing is open to the General Band Membership.
- 11.4 **Decision by Council Resolution:** Chief and Council will then by Council Resolution decide the matter referred to in section 11.1, including approving or forbidding the proposed transaction, and may make any other order, direction, declaration or record necessary in its discretion to fairly and justly dispose of the matter.
- 11.5 **Written Notice of Decision:** Chief and Council will give each person making the disclosure referred to in section 11.1, written notice of its decision, together with a brief written statement of its reasons.
- 11.6 **Approval on Conditions:** Any approval by Chief and Council of the disclosure referred to in section 11.1, may be on conditions, such as:
 - (a) that all work on the approved transaction by the Band member or employee, Council Member or Senior Official, as the case may be, be:
 - (i) conducted outside the regular business hours of the Band, or from a location other than the Band office; or
 - (ii) documented by timesheets, which would be provided to the Band upon request;

- (b) that the contract resulting from the approved transaction be provided to the Band upon request; or
- (c) that in the event of an inquiry by INAC, the police, any Band member, any Band employee or the Band auditor, about the approved transaction, that all additional relevant documentation necessary to deal with the inquiry will be provided to the Band upon request.

12 **LIABILITY TO ACCOUNT**

12.1 **Approval by Chief and Council:** For each transaction for which written disclosure has been provided to Chief and Council under:

- (a) sections 6.1 and 6.2 by a Band member or employee;
- (b) section 7.2 by a Council Member or Senior Official;
- (c) section 8.4 by a Council Member or Senior Official;
- (d) section 9.2 or 9.3 by a Council Member or Senior Official, respectively;
- (e) section 9.9 by a Band member or employee;

which transaction has then been approved by Chief and Council under section 11.4, there shall be no liability to account to the Band by the Band member, employee, Council Member or Senior Official, as the case may be, for any profit or gain arising to him or her or any immediate family member, from that transaction.

12.2 **Approval by General Band Membership:** For each transaction for which the required written disclosure was not provided to Chief and Council under:

- (a) sections 6.1 and 6.2 by a Band member or employee;
- (b) section 7.2 by a Council Member or Senior Official;
- (c) section 8.4 by a Council Member or Senior Official;
- (d) section 9.2 or 9.3 by a Council Member or Senior Official, respectively; or
- (e) section 9.9 by a Band member or employee;

there shall still be no liability to account to the Band by that Band member or employee, Council Member or Senior Official, as the case may be, for any profit or gain arising to him or her or any immediate family member, from that transaction provided:

- (f) he or she acted honestly and in good faith throughout;
- (g) the transaction was reasonable and fair to the Band;
- (h) he or she authorizes the Band to provide reasonably detailed information about the transaction and his or her interest in the transaction, to the General Band Membership; and
- (i) the transaction is approved by the General Band Membership.

12.3 Accounting for Profit: Except where there is no liability to account by reason of the application of either section 12.1 or 12.2:

- (a) the Band member or employee must account to the Band for all profit or gain realized by him or her or any immediate family member, from the transaction described in sections 6.1, 6.2 or 9.9; and
- (b) the Council Member or Senior Official must account to the Band for all profit or gain realized by him or her or any immediate family member, from the transaction described in any of sections 7.1, 8.4, 9.2 or 9.3, as the case may be.

13 REMUNERATION OF COUNCIL MEMBERS AND SENIOR OFFICIALS

13.1 Factors Affecting Remuneration: The Band recognizes:

- (a) that its numerous economic development initiatives require its Council Members and Senior Officials to fulfill in addition to their governance, managerial, administrative and financial functions for the Band, the additional functions of starting up, finding financing, creating the necessary infrastructure, and managing economic development initiatives of the Band to the point where they become successful businesses, and then supervising the management of those businesses;
- (b) the extra work created by these economic development initiatives, for Council Members and Senior Officials, has not been recognized or compensated in the past by the Band;

- (c) the risk of failure of these economic development initiatives, for the careers of the Council Members and Senior Officers, has not been recognized or compensated in the past by the Band;
- (d) the remuneration paid to its Council Members and Senior Officers must reflect:
 - (i) the responsibility resting on these individuals for economic development and running businesses for the Band, in addition to governance;
 - (ii) the risk of failure of the economic development initiatives for the Band, for the careers of the Council Members and Senior Officers; and
 - (iii) the fair market value of all the work performed by these individuals for the Band in economic development and running businesses for the Band, in addition to governance.

14 **BUSINESS ENTITY FOR TWO OR MORE COUNCIL MEMBERS**

14.1 **General Band Membership Approvals:** Where two or more Council Members either:

- (a) have an ownership interest in a business entity; or
- (b) control a business entity;

the General Band Membership shall stand in the place of Chief and Council for any approvals or consents of the Band required under this Policy, with any necessary changes in points of detail.

15 **APPROVAL BY GENERAL BAND MEMBERSHIP**

15.1 **Difficulties:** The Band acknowledges that many of the Band members live off reserve, and a considerable distance from the reserve lands of the Band, making:

- (a) assembly of the General Band Membership in person on the reserve for an in person vote; or
- (b) a mail in referendum vote for the whole of the General Band Membership;

time consuming and difficult, and beyond the financial and administrative resources of the Band, for seeking approvals or consents of the General Band Membership.

- 15.2 **Custom of the Band:** Any approvals or consents required from the General Band Membership shall be obtained according to the custom of the Band, as set out in this Article 15.
- 15.3 **Band Newsletter and Website:** The custom of the Band is to keep the General Band Membership informed by way of the Band newsletter and website.
- 15.4 **Broad Consensus:** Subject to section 15.5, the custom of the Band is to determine the broad consensus for or against a matter amongst the General Band Membership, by:
- (a) posting reasonably detailed information about the matter on the Band website;
 - (b) e-mailing all Band members to advise them that an important matter requiring their written response within 14 days of the date of the notice, has been placed on the Band website;
 - (c) inviting on the Band website:
 - (i) questions and comments from all the Band members; and
 - (ii) written responses from all Band members within the 14 day period; and
 - (d) tallying the responses received from the Band members within the 14 day period to determine the broad consensus in the General Band Membership for or against the matter.
- 15.5 **Confidential Matters:** On matters concerning confidential information of the Band, the custom of the Band is to determine the broad consensus for or against a matter amongst the General Band Membership, by:
- (a) providing reasonably detailed information about the matter either by mail or delivery to all Band members, together with a notice from the Band:

- (i) inviting questions and comments from all Band members; and
- (ii) requesting a written response from each Band member within 28 days of the date of the notice; and
- (b) tallying the responses received from the Band members within the 28 day period to determine the broad consensus in the General Band Membership for or against the matter.

16 NOTICE

16.1 **Method:** Any notice to be given to a person pursuant to this Policy shall be in writing, have the signature of the sender at the end, be dated, and shall be :

- (a) sent in a fully prepaid envelope mailed in the Province of British Columbia, addressed to the person receiving. Any such notice shall be deemed to have been given and received by the persons concerned on the fourth business day following the mailing thereof;
- (b) delivered, and if delivered shall be deemed to have been given and received by the persons concerned upon delivery thereof. If delivering to a residence, business or other building at which no one answers, it shall be sufficient to complete the delivery by putting the notice in a mail box, putting it through a mail slot, or fixing it right to the entrance door; or
- (c) e-mailed or faxed, and shall be deemed to have been given and received by the persons concerned on the next business day after e-mailing or faxing.

16.2 **Band Newsletter and Website:** The Band may, in addition to the methods specified in section 16.1, give written notice to the Band members by placing the notice:

- (a) in the Band newsletter, in which case the notice shall be deemed to have been given and received, according to the method of forwarding as specified in section 16.1, of the newsletter by the Band to that Band member; or

- (b) on the Band website, in which case the notice shall be deemed to have been given and received by all Band members on the fourth business day after placing by the Band on the website.

16.3 **Invalid Notice:** Any notice received by the Band from a Band member or employee, has to be in writing, have the signature of the Band member or employee at the end, and be dated, to be a valid legal notice.

16.4 **Current Addresses:** All Band members and employees shall be responsible to advise the Band administration office of their current mailing, delivery and e-mail addresses, and fax number, if applicable. The Band shall be entitled to rely upon the latest addresses received from Band members as recorded in the Band administration records, for the purpose of providing notice under this Policy.

17 **DISPUTE RESOLUTION**

17.1 **Mediation and Arbitration:** All disputes, deadlocks or disagreements (the "**Disputes**") arising between any persons to whom this Policy applies, about:

- (a) this Policy; or
- (b) any decision of Chief and Council made under this Policy;

shall be referred within 10 days of the date of the Dispute arising to a mediator acceptable to the parties in dispute, to be appointed by the Band, which mediator shall attempt to resolve the Dispute. If within 20 days of the date of the Dispute arising, a mediator has not been found acceptable to all the parties in dispute, or the mediator has not been able to resolve the Dispute, the Dispute shall be finally settled by reference to a single arbitrator under the *Arbitration Act* of British Columbia. The determination of such arbitrator shall be final and binding upon all the parties in dispute, subject to the right of appeal by any party under the said Act. Any dispute as to who shall be the arbitrator shall be finally settled by the British Columbia Arbitration and Mediation Institute, 366-1275 W 6th Ave, Vancouver, BC, V6H 1A6, phone 604-736-6614, without any right of appeal by any party.

- 17.2 **Costs:** All costs of any mediator or arbitrator appointed under section 17.1 shall be paid by the Band and each party in dispute shall bear its own costs of any mediation or arbitration.

The ASHCROFT INDIAN BAND CHIEF AND COUNCIL HEREBY RESOLVES BY CONSENT of a quorum of the members of the Council of the Band present at a meeting of Council duly convened and held on the _____ day of _____, 20__ that:

The General Band Membership having been consulted, in accordance with custom of the Band, this Policy is issued under the authority of the Chief and Council of the Ashcroft Indian Band, to come into immediate effect.

ASHCROFT INDIAN BAND

Per:

Chief

Councillor

Councillor

ASHCROFT INDIAN BAND

ECONOMIC DEVELOPMENT POLICY

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