

PROTOCOL

Between

**THE MINISTER RESPONSIBLE FOR THE YUKON DEVELOPMENT
CORPORATION
(AS REPRESENTATIVE OF GOVERNMENT)
GOVERNMENT OF YUKON**

AND

**THE CHAIR OF THE YUKON DEVELOPMENT CORPORATION
(AS REPRESENTATIVE OF YUKON DEVELOPMENT CORPORATION)**

PURPOSE

This Protocol between the Government of Yukon (Government) and the Yukon Development Corporation (Development) is an agreement on the Government's performance expectations for Development, and the parties' respective accountabilities, roles and responsibilities.

This Protocol is required under section 6 of the *Yukon Development Corporation Act* and is intended to promote a positive and co-operative working relationship between Development and Government. Government, Development and Energy will continue to clarify operational responsibilities over the next year.

DEVELOPMENT MANDATE

Government has provided the following mandate direction to Development under the *Yukon Development Corporation Act*:

- Pursuant to the *Yukon Development Corporation Act* and Order-in-Council 1993/107, Development shall, in undertaking new initiatives, restrict itself to energy related activities designed to promote the economic development of the Yukon, and in particular designed to:
 - Assure a continuing and adequate supply of energy in the Yukon in a manner consistent with sustainable development;
 - Alleviate the effects of any energy shortage that may occur in the Yukon; and
 - Promote the establishment, development and operation within the Yukon of industries or undertakings that are, by their nature, energy-dependent through the provision of cost-effective energy or energy-related infrastructure.

- Development is the sole shareholder of the Yukon Energy Corporation (Energy), a business corporation under the *Business Corporations Act* and is responsible for ensuring that Energy fulfills its mandate while operating within Government objectives.
- Development is an agent of government and has responsibilities under, and is subject to, a number of statutes and regulations including:
 - *Yukon Development Corporation Act*;
 - *Corporate Governance Act*;
 - *Financial Administration Act*;
 - *Public Service Act*;
 - *Business Corporations Act*; and
 - *Access to Information and Protection of Privacy Act*.

ROLES AND RESPONSIBILITIES

Government is responsible for the legislative, regulatory and public policy frameworks in which Development operates and manages its subsidiary, Energy. The Legislature enacts Development related legislation and financial appropriations.

GOVERNMENT

The Minister

The Minister is the key link between Government and Development, and is accountable to the Legislative Assembly for Development. The Minister reports to the Legislative Assembly on the affairs of Development and answers questions about Development.

The Minister:

- Is responsible for developing and implementing energy policy and providing direction relating to energy policy and its implementation to Development;
- Is accountable to the Legislative Assembly for Government's direction to Development;
- Seeks Legislative or Management Board approval for appropriations to support government policy objectives delivered through its agent Development;
- Seeks Cabinet approval for appointment of Development Board members;
- Advises Cabinet on the use of directives under the *Yukon Development Corporation Act*.

- Fosters an effective working relationship with the Development Board chair, including informing the Chair of policy directions or information requirements that may materially impact operations;
- Communicates mandate, commitments, performance expectations and ongoing policy direction to Development through this Protocol and other means, which may include a Shareholder's Letter of Expectation;
- Reviews and approves the setting and monitoring of Development's strategic direction and targets;
- Monitors the operations and performance of Development to ensure that it is fulfilling its mandate in compliance with Government policies and priorities;
- Reviews (and tables in the Legislative Assembly) Development's Strategic Plans, Business Plans and Annual Reports; and
- Responds to public enquiries regarding Government's direction to Development.

The Deputy Minister

The Deputy Minister supports and acts under the general direction of the Minister. As deputy head of the Department of Energy, Mines and Resources, the Deputy Minister is under the *Yukon Development Corporation Act ex officio* the President of Development. The President will also exercise the powers and responsibilities of Chief Executive Officer (CEO) for Development.

The Department of Energy, Mines and Resources

The Department provides advice to the Minister, supports the development of the Shareholder's Letter of Expectations and Protocol, reviews Development's Strategic Plans and Annual Reports, and works with Department of Finance to ensure Development's budget and financial reporting requirement are met. The Department will coordinate and share Development and Government energy activities.

DEVELOPMENT

The Board Chair

The Chair is the key link between Government and Development and advises the Minister of issues that materially impact Development's business or the Ministers' interests and accountabilities.

With direction from the Board, the Chair represents the Board and its interests, as well as the interests of Development, in dealing with the Minister, the Department, the CEO, stakeholders and the community. The Chair is responsible for providing leadership for the Board and for effectively facilitating the work of the Board.

The Chair is responsible for:

- Planning and managing Board meetings;
- Providing the Minister with regular updates on Development's operations and informing the Minister regarding emergent issues;
- Ensuring that the Board, and its committees, have opportunities to meet independent of management;
- Ensuring that the Board conducts an annual evaluation of its own performance, and the performance of Development's senior management;
- Administering Development's Code of Conduct and ensuring that conflict of interest matters are addressed by the Board;
- Fostering an effective working relationship with the Minister;
- Ensuring the Minister (or his/her representative) is provided with the information and advice needed to respond to questions from members of the Legislative Assembly and to fulfill Government's responsibilities;
- Being cognizant of how Corporation issues might affect Government and inform the Minister of potentially contentious issues, major financial changes and any new initiatives that could materially impact government interests; and
- Receiving Government's mandate direction through this Protocol, the Shareholder's Letter of Expectation and any other means used by the Government, which may include written directives issued by the Minister under Section 6.1 of the *Yukon Development Corporation Act*, or Orders-in-Council approved by Cabinet.

The Board

The Board's role is to govern Development in a manner consistent with the applicable legislation and Cabinet's mandate and policy direction, and to ensure Development complies with Government's general direction, policies and fiscal plans.

The Board guides Development's strategic direction, evaluates the performance of senior management, approves and monitors Development's business plan, operational plan and financial results and is ultimately accountable to the Minister. Board members must meet their fiduciary obligation to act in the best interest of Development, which must include the public interest as determined by the Government and expressed in the mandate of Development.

The Board is responsible for:

- Ensuring Development's affairs are conducted in accordance with its statutory and regulatory requirements, corporate by-laws, and policies;
- Establishing bylaws, policies, and procedures to define the Board's operations and delegation of authority and to carry out Development's mandate;
- Approving strategies, operational policies and plans necessary to fulfill Government's direction;
- Advising the Minister of issues that materially impact Development's business or the Government's interests and accountabilities;
- Monitoring and reporting on Development's progress in fulfilling Government direction and informing the Minister of any significant variances from planned targets (reflecting either unexpected successes or shortfalls);
- Developing, approving (subject to the Minister's guidance), implementing and monitoring Development's multi-year strategic plan and annual business plan, which will identify comprehensive, attainable goals and objectives, and set appropriate performance measures for Development;
- Providing its Chair and Chief Executive Officer as witnesses at Legislative Committees, as required;
- Ensuring that the Minister receives the information required to perform his or her duties as Minister;
- Ensuring Development adherence to financial and other reporting obligations to Government;

- Monitoring management controls, periodically reviewing related operational policies and practices for areas of weakness or inefficiencies, and ensuring that the appropriate controls are in place;
- Providing general direction, and specific delegation of authority, to Development's senior management for the day-to-day management and administration of Development's activities;
- Completing an annual performance evaluation of senior management;
- Strengthening and improving internal corporate governance systems including Board of Directors training to ensure the effective management and operations of Development;
- Establishing policies to identify and manage liabilities and promote the efficient use of Development's resources and assets in a manner that will safeguard Development from inappropriate use or loss; and
- Managing its own public communications, within its areas of competence, under the leadership of the Board through the office of the Board Chair;

All directors will be appointed by the Commissioner in Executive Council as required by the Act.

DEVELOPMENT'S RESPONSIBILITY FOR ENERGY

The ownership of Energy, including related financing activities, is Development's most significant undertaking.

Energy has a unique dual status in relation to Government. On the one hand, it is not an agent of Government or a "government corporation" for purposes of the *Corporate Governance Act*. It is subject to the same laws as ordinary business corporations, its directors have the same fiduciary obligations as directors of other companies and its owner – Development, and indirectly the Government - has the same control as any other sole shareholder.

On the other hand, Energy's incorporation, organization and operation are the subject of legislated instructions from the Government to Energy's direct shareholder Development. The Government has treaty obligations to First Nations in respect of Energy. And Energy is subject to the *Access to Information and Protection of Privacy Act*. All of these reflect successive Governments' intention that Energy should serve the public interest as those Governments determined it to be.

While acknowledging the separate legal personalities of Development and Energy, the Government expects Development to exercise its legal and factual control of Energy in a manner that supports the implementation of government's strategic priorities.

Development will:

- Appoint Energy's Board of Directors based on nominations by Government;
- Ensure Energy's operation and performance are consistent with government's strategic priorities and fiscal plan;
- Provide direction to Energy on Government's strategic priorities;
- Have sufficient knowledge of the actions and affairs of Energy to be able to provide information regarding Energy in appropriate contexts;
- Ensure that Energy's board of directors provides, in respect of Energy, the same kind of information and advice as described in The Board section above;
- Ensure that Energy's board chair and senior management are available, when requested by the Minister, to attend meetings of the Legislative Assembly and its committees and to answer appropriate questions there;
- Work with Energy and its board, officers and employees to enhance Energy's internal corporate governance and the effectiveness of its management; and
- Work with Government and Energy to ensure the protocol between Development and its subsidiary is current, and reflects Government's strategic priorities.

Development will use its protocol with Energy, and may in addition use any other appropriate instrument, to record Energy's obligations in respect of the above matters.

The President and Chief Executive Officer

The President and Chief Executive Officer is responsible for managing Development's daily operations under the Board's stewardship and direction.

The President and Chief Executive Officer is responsible for:

- Providing leadership, general supervision, management and control of Development's operations on a day-to-day basis in accordance with Board-approved plans and policies;
- Ensuring that programs and services are being delivered within the standards and policies of Development;
- Providing leadership and vision in developing the tactics and plans necessary to realize operational objectives;

- Managing Development to ensure business plans are effectively implemented, results monitored and reported to the Board, and financial and operational objectives are attained;
- Monitoring performance and taking corrective action when problems are identified;
- Ensuring the proper management of Development's risk in providing services and care of the organization's assets;
- Providing support to the Board to allow it to carry out its governance responsibilities;
- Working with the Board to prepare an annual Strategic Plan and Business Plan and Annual Report in accordance with the guidelines provided by the Minister; and
- Maintaining effective communications with the Board Chair, the Minister, senior staff in the Department, other Departments as required, stakeholders and other business partners.

COMMUNICATION AND REPORTING

- The Board Chair and senior management of Development will attend the Yukon Legislative Assembly and the Public Accounts Committee whenever requested by the Legislative Assembly, the Committee or the Minister, to provide information and answer appropriate questions relating to Development.
- The Board Chair will report in writing to the Minister in relation to Development to facilitate monitoring of both corporations' performance.
- The Board Chair will ensure that the Minister has reasonable advance notice of the intentions of Development on major issues within its areas of competence.
- The Board Chair will provide to the Minister information relating to Development reasonably necessary to facilitate day-to-day management of ministerial case work.
- The Board Chair will advise the Minister on a timely basis of any issue relating to energy policy in respect of which action, including urgent action, by the Government would, in the opinion of the Board Chair, be in the public interest.
- The Board Chair will inform the Minister of any public announcements or press releases prior to their release.
- Development and the Government will establish working-level communications procedures to supplement the above practices.

PERFORMANCE EXPECTATIONS

Performance expectations for Development and its subsidiary are included in this document and the Shareholder Letter of Expectation 2012-2013.

REVIEW AND REVISION OF THIS PROTOCOL

This Protocol will be reviewed annually to determine whether any changes are required to ensure that Development can effectively carry out its responsibilities and its authorized activities. Government and Development may agree to amend this Protocol on a more frequent than annual basis.

APPROVED BY

GOVERNMENT OF YUKON



Brad Cathers
Minister Responsible for Yukon Development Corporation

DATE: Nov. 1, 2012

and

YUKON DEVELOPMENT CORPORATION



Chair of the Yukon Development Corporation Board

DATE: Nov 1/12