

MEMORANDUM OF UNDERSTANDING

City of Burlington – New Moran, Inc.

This Memorandum of Understanding (this “MOU”) is dated this ____ day of _____, 2014, by and between the City of Burlington, a Vermont municipal corporation (“City”), and New Moran Inc., a non-profit corporation organized under the laws of the State of Vermont (“New Moran”).

WITNESSETH:

WHEREAS, the City owns certain lands on the Burlington waterfront and holds such lands in the public trust; and

WHEREAS, included therein stands the Moran Generating Plant (hereafter “the Property”) which was decommissioned in 1987 and has been idle since, as the City has endeavored unsuccessfully on numerous prior occasions to find an adaptive reuse for the building; and

WHEREAS, in 2013 the City’s Public Investment Action Plan (PIAP) was conceived for the purpose of, and ultimately resulted in, an open public process to select proposed projects that would be eligible to receive public infrastructure improvements through the City’s Waterfront Tax Increment Financing (TIF) District; and

WHEREAS, New Moran submitted one of fifty concepts that came from private and public entities in response to the PIAP open request for proposals for future waterfront development; and

WHEREAS, the proposal subsequently prepared by New Moran and submitted to the City (see attached summary sheet, Exhibit A) called for a mixed-use redevelopment of the Property with a focus on green energy innovation, local foods, and a multi-purpose arts and events space (hereafter “Project”); and

WHEREAS, substantial public infrastructure improvements would need to be made by the City to the Property in order for the building and adjacent site to be able to be redeveloped; and

WHEREAS, in March 2014, the City voters approved a measure for the City Council to authorize up to \$9.6 million of financing for TIF infrastructure in support of the selected PIAP projects, including up to \$6.3 million for the Project; and

WHEREAS, since being selected as a possible PIAP project, New Moran has worked diligently to initiate its charitable fundraising efforts while also successfully assembling its predevelopment team; and

WHEREAS, the parties agree that it is in their respective best interests to execute this MOU to outline their shared understanding of the criteria and timeline for both parties to evaluate Project feasibility and take measured responsible steps towards (a) a development agreement; (b) a long term lease of the Property and grounds; and (c) construction of the Project; and

NOW, THEREFORE, in consideration of the foregoing and the mutual promises set forth herein, the parties agree as follows:

Section 1. **Exclusivity**. While the parties work in good faith to determine project feasibility, the City agrees to work exclusively with New Moran as the developer of the Project for such time period as this Agreement remains in effect subject to the terms and conditions contained herein.

Section 2. **Project Phases**. The Project will involve the following phases:

(a) Predevelopment Due Diligence Phase:

During this initial phase, New Moran, with the cooperation of the City, will conduct the necessary investigations to further refine and update the Project's design, projected development cost, tenant mix, and financing plan.

Upon the completion of the Due Diligence Phase, New Moran shall provide the City with a written report of its findings (The Findings Report). The Findings Report shall be submitted to the City on or before November 15, 2014. This written report shall include the following updated information:

- 1) Conceptual Building Design & Site Plan
- 2) Development Budget
 - Hard Costs (base building & tenant improvement assumptions)
 - Soft Costs including capitalized start-up operating costs
- 3) Operating Budget & Proforma
- 4) Financing Plan
 - Sources, including specific requests for City infrastructure investment
 - Credit Enhancement Assumptions
 - Detailed outline and proposed term sheet for City-provided funding sources requested by New Moran
- 5) Determination of sufficient operating reserves
- 6) Capital Fundraising Campaign Plan
 - including updated milestone projections
- 7) Fundraising Feasibility Study
- 8) Ground Lease and Property Tax Liability Assumptions
- 9) Updated Project Schedule
- 10) Letter of interest for project funding from a Community Development Entity (CDE) for New Market Tax Credits (NMTC) allocation
- 11) Preliminary Market Analysis
 - supporting projected rents, CAM, and operating projections
- 12) Proposed tenant mix;
- 13) Preliminary Review with Planning / Zoning Staff

CEDO shall be responsible, on behalf of the City, for reviewing the Findings Report and submitting a communication to City Council with its project assessment.

This project assessment will include a Draft Term Sheet based upon the Findings Report. The Draft Term Sheet shall outline the key terms and conditions under which the City will fund Tax

Increment Financing infrastructure investments needed for the project. The City will make best efforts to have a Final Term Sheet approved by City Council by January 26, 2015.

(b) Development Agreement Phase

If the parties choose to proceed beyond the Due Diligence Phase they shall work collaboratively to prepare a Development Agreement that will outline the business and legal terms for the disposition of the property as well as the respective roles and responsibilities of each party moving forward. The City and New Moran will prepare a Development Agreement targeted to be approved by City Council not later than its final meeting in March, 2015.

Items to be addressed by the Development Agreement shall include, but will not be limited to the following:

- Definition of Development Program,
- Property Disposition Terms & Conditions (ie Ground Lease),
- City Funding Obligations & Conditions (PIAP, TIF, etc),
- Property Tax Disposition
- Permitting Responsibilities,
- Environmental Remediation Protocol,
- Parking Strategy Plan,
- Project Funding Schedule, Milestones, and Deadlines,
- City's Closing Pre-conditions
- Closing Date
- Tenant Letters of Intent

(c) Design, Permitting, and Funding Phase:

During this phase, New Moran shall make best efforts to secure and implement the development and financing plan as set forth in Phases (a), (b) and (c). This work shall be completed within a mutually agreed upon time period to be set forth in the Development Agreement. Tasks that are necessary to complete during this phase shall include, but are not limited to:

- Market Study
- City of Burlington Land Use Permitting
- Federal and State Land Use Permitting
- Historic Tax Credits
 - Coordination & Application with National Park Service and State
- NMTC:
 - Applications to CDE for NMTC Allocation
 - Securing Commitment for NMTC Allocation
- Implementation of Capital Fundraising Campaign Plan
 - Monthly meeting with CEDO to review status
- Project Lease Up:
 - Confirm credit of anchor tenants under LOI
 - Define tenant fit-up scope of work
 - Secure Commitment Letters from anchor tenants

- Draft Leases
- Architecture & Engineering:
 - Design Development Set,
 - Final Construction Documents (Bid Set)
- Construction Administration & Value Engineering:
 - RFP for CM Services & Selection
 - Updated Estimating
 - Bidding and Securing a Guaranteed Maximum Price

(d) Closing & Construction Phase: Upon completion of the Design, Permitting, & Funding Phase, and satisfaction of the City’s closing pre-conditions the parties shall move to the Closing & Construction phase. This work shall be completed within a mutually agreed upon time period to be outlined within the Development Agreement.

Section 3. **Miscellaneous Provisions:**

- a) The parties acknowledge and are both committed to cooperating with each other and the Vermont Department of Environment Conservation to complete the Corrective Action Plan for the Property. Obligations and responsibilities for any potential future environmental remediation shall be specified in the Development Agreement.
- b) New Moran’s Access to, and use of, the Property shall be subject to the “Agreement for Access to the Moran Plant” dated July 28, 2014 (see attached Exhibit B).
- c) Consistent with assuring that the City’s responsibilities under the Public Trust doctrine are adhered to, the parties are hereby committed to cooperating with each other and New Moran will work in good faith with developers of other potential projects on the City’s Public Trust lands.
- d) Neither the City nor New Moran shall be deemed in violation of this MOU if it is prevented from performing any obligations hereunder by reason of strikes, boycotts, labor disputes, acts of God, acts of the public enemy, acts of superior governmental authority, severe weather conditions, riots, rebellion, sabotage, or any other circumstances for which it is not responsible or which is not under its control, and the party experiencing force majeure gives written notice to the other party identifying the nature of such force majeure, and when it began.
- e) The parties have executed this MOU solely in their capacity as prospective landlord and tenant and nothing herein is intended to create any joint venture, partnership, co-developer or similar relationship.
- f) Any notice or other communication from any party to the other pursuant to this MOU shall be deemed sufficiently given or communicated if sent by first class mail, postage pre-paid and addressed to:

For City:

Miro Weinberger, Mayor
 City of Burlington
 City Hall
 149 Church Street,

Burlington, VT 05401

For New Moran Inc.

(g) This Agreement shall, in any event, be superseded in its entirety by the execution of a Development Agreement which accords with the provisions Section 2 (c), Furthermore, this Agreement, in the absence of a Development Agreement, can be terminated by either party, for any reason, at any time after January 26, 2015.

IN WITNESS WHEREOF, this MOU is executed by the duly authorized officers or representatives of the City of Burlington and the New Moran as of the day and date first above written.

THE CITY OF BURLINGTON

By: _____
Miro Weinberger, Mayor
Duly Authorized Agent

STATE OF VERMONT
COUNTY of CHITTENDEN, SS.

At Burlington, in said County, on the ___ day of _____, 2014, personally appeared, Miro Weinberger, Mayor of the City of Burlington and acknowledges this instrument by him, sealed and subscribed to be his free act and deed, and the free act and deed of the City of Burlington.

Before me,

Notary Public

Commission Expires

New Moran Inc.

By: _____

Duly Authorized Agent

STATE OF VERMONT
COUNTY OF CHITTENDEN, SS.

At Burlington, in said County, on the ___ day of _____, 2014,
personally appeared, _____, and acknowledges this
instrument by him, sealed and subscribed to be his free act and deed, and the free act and deed of
the New Moran Inc.

Before me,

Notary Public

Commission Expires

DRAFT