

**AFFORDABLE HOUSING FUNDING CONTRIBUTION AGREEMENT**  
(the "**Agreement**")

THIS AFFORDABLE HOUSING FUNDING CONTRIBUTION AGREEMENT is made as of the \_\_\_\_ day of \_\_\_\_\_, 2023 (the "**Effective Date**") between:

**THE CITY OF FREDERICTON** (the "**City**"), a local government under the *Local Governance Act* (New Brunswick);

and

**THE JOHN HOWARD SOCIETY OF FREDERICTON, INC.**, a body corporate under the *Companies Act* (New Brunswick) ("**Recipient**")

(collectively the "**Parties**" and individually a "**Party**").

**WHEREAS** additional affordable housing units are urgently needed in the City of Fredericton for people and populations who are vulnerable and are experiencing, or at risk of, homelessness;

**AND WHEREAS** the City has entered into an agreement with the Canada Mortgage and Housing Corporation ("**CMHC**") pursuant to which CMHC will provide funding under its Rapid Housing Initiative program and the City will take on responsibility for construction and maintenance of affordable housing units for people and populations who are vulnerable by entering into Affordable Housing Funding Contribution Agreements with third-party non-profit organizations (the "**CMHC Agreement**");

**AND WHEREAS** a provision of the CMHC Agreement requires that any project to which funding is provided have no financial encumbrances whatsoever;

**AND WHEREAS** the Recipient has confirmed to the City that the Recipient will have sufficient financial resources, without borrowing any funds or granting any security against the project, which combined with the Contribution herein, will allow it to be able to complete the construction and operation of its project for a full 20 year period;

**AND WHEREAS** in connection with the CMHC Agreement, the City is entering into this Agreement to make a contribution to the Recipient for the purpose of developing, in conformity with the project proposal submitted by the Recipient to the City, a copy of which is attached hereto as Schedule B and in conformity to the requirements of this Agreement (the "**Deliverables**"), at least eight (8) affordable housing units at the location in the City of Fredericton stated in the Deliverables (the "**Units**");

**NOW THEREFORE** for value received, the Parties agree as follows:

**1. Contribution and Purposes**

The contribution by the City under this Agreement is \$2,000,000.00 (the "**Contribution**") and will be advanced to the Recipient pursuant to the terms and conditions stated herein and such Contribution shall only to be used for the acquisition of the land and the construction of the affordable multi-residential housing, as described in the Deliverables, and eligible costs associated with the foregoing including pre-development and pre-construction (e.g. environmental site assessments, cost

consultant reports, architectural or engineering reports, legal/closing costs related to acquisition of land and buildings) for the development of permanent affordable housing Units. The Parties agree that the Recipient shall be required to supplement the Contribution with its own funds so as to complete the Deliverables and to operate the units comprising the Deliverables for the 20 year period required herein. The Recipient agrees and confirms that it shall not borrow funds from any party or grant security interest in the project to any party for the purpose of the construction and operation of the Deliverables. The Recipient may rely upon the receipt of funding from the Province of New Brunswick, in which case the Recipient shall provide proof of such funding to the City in a form acceptable to the City. In no event shall the Recipient submit to the City a Funding Advance Request which causes the total amount of all such requests to exceed the Contribution amount. The Recipient agrees that it shall obtain alternative funding, or use its own sources of funding, to cover any costs which are not eligible costs to be covered by the Contribution from the City and to cover any additional costs for completing the project described in the Deliverables, including any cost overruns.

The Contribution shall only be used for costs incurred on or after December 1, 2022 and the Contribution shall not be used for any operational expenses of the Recipient. The Contribution may only be used for the project as described in the Deliverables and the Recipient shall not make any changes to the project scope, design, time to complete or other aspects of the Deliverables without first obtaining the written consent of the City. Furthermore, the Recipient is solely responsible for any cost overruns whether due to City approved changes in scope, design, time to complete, site conditions or otherwise and the City will not increase the Contribution in any circumstances. The City confirms that it shall not add any further requirements to the project which would have the effect of increasing the cost of the Deliverables without prior agreement of the Recipient, subject to the condition that any requirements required to meet building and occupancy standards shall not be considered an additional requirement.

In the event there is a discrepancy between the terms of this Agreement and terms and/or details contained in the Recipient's proposal set out in Schedule B, the terms of this Agreement shall govern and such terms of the proposal shall be deemed stricken from Schedule B to the extent of such discrepancy.

## **2. Expiration of Commitment**

The City and CMHC shall each have the right to periodically review the progress of the Recipient in fulfilling the Deliverables. Should either the City or CMHC consider that there may be reasonable doubt any part of the Deliverables will be fully and timely delivered as expected, or where the Recipient has not started the project within 2 months of the start date set out in the Deliverables, the City shall have the right to reduce or cancel the Contribution to the extent the City considers reasonable. In such case, the City shall have no further obligations under this Agreement or otherwise to provide funding or support to the Recipient for the Deliverables. With respect to any Deliverables previously completed at such date, the Recipient shall remain bound by the terms of this Agreement with respect to such Deliverables, including the obligations to maintain and use such Units as described herein for a period of 20 years and to provide reporting during such period.

For the purpose of this section, the determination of when the Recipient has started the project shall be such date when the Recipient has incurred Hard Costs, and such claim that Hard Costs are incurred is acceptable to CMHC.

### 3. **Obligations of Recipient and City**

The Recipient agrees it will:

- (a) perform all of its obligations under this Agreement (including, but not limited to, ensuring the elements of the project under the Recipient's proposal included in Schedule B attached hereto are completed) and use the Contribution only for the purposes specified in the Deliverables (and no other purpose) to create affordable Units for People And Populations Who Are Vulnerable who are targeted by the Affordability Criteria (as defined in Schedule A);
- (b) submit no later than April 1, 2024, for the City's review and approval, the project(s) details including design plans and/or drawings as well as a detailed project budget setting out the expected costs for the various elements of the Recipient's project and the dates and milestones for Funding Advance Requests, and a contingency amount funded by the Recipient, and acceptable to the City, which would reasonably expected to account for potential cost overruns on a project of the size and scale of the project described in the Deliverables. The dates and milestones for Funding Advance Requests must be such that the percentage of the Contribution requested under a Funding Advance Request, together with all previous Funding Advance Requests made, does not exceed the percentage completion of the Deliverables. Once approved by the City, such design plans and/or drawings and project budget (including adequate contingency for cost overruns) shall be deemed to be included in and form part of Schedule B of this Agreement;
- (c) prior to commencing any work, the Recipient shall provide a Certificate of Insurance to the City confirming that the Recipient and/or its contractor has in force the Construction Insurance Coverage (as defined in Schedule A) prior to the start of any work on the Project, and shall maintain such insurance until the completion of the project. All required insurance must be provided by insurers authorized to do business in the Province of New Brunswick and acceptable to the City;
- (d) after the completion of the work, the Recipient shall provide a Certificate of Insurance to the City confirming that the Recipient has in force the Liability and Property Insurance Coverage (as defined in Schedule A) and shall maintain such insurance for the full Term of this Agreement;
- (e) submit to the City at least 30 days prior to any Funding Advance Request the following:
  - (i) statutory declarations, in a form acceptable to the City, from any contractors confirming payment of all amounts due and owing have been on the contract;
  - (ii) regulated forms pursuant to the *Construction Remedies Act* (New Brunswick), including certification of Substantial Performance (Form 7) or certification of Completion (Form 8), as appropriate;
  - (iii) WorkSafeNB clearance certificate; and
  - (iv) such other certificates that may be required by the City to evidence that the Recipient is in compliance with all Applicable Laws, including all requirements for holdbacks and/or that such funds are being held in a separate holdback trust account pursuant to the Applicable Laws (including, but not limited to, the New Brunswick *Construction Remedies Act*);
- (f) ensure that for a minimum period of 20 years (or for such longer period as agreed to in the Deliverables), commencing on November 15, 2024, or on another date as may be set by the City at its

discretion (the "**Term**"), the Units meet the Affordability Criteria (as defined in Schedule A) and are for People And Populations Who Are Vulnerable;

(g) ensure that the Units, and the newly constructed building(s) where the Units are situated, will meet the accessibility requirements set out in the Deliverables (if applicable) or, if none set out in the Deliverables, (ii) the local accessibility requirements in the City of Fredericton, New Brunswick during the Term;

(h) ensure that the Units, and the newly constructed building(s) where the Units are situated, will meet the energy efficiency standards set out in the Deliverables (if applicable) or, if none set out in the Deliverables, (ii) the energy efficiency standards, as set out in the 2017 National Energy Code for Buildings (NECB) for Part 3 buildings and 2015 National Building Code (NBC) for Part 9 buildings, as applicable;

(i) ensure that at all times during the Term that it (i) acts with integrity and follows any client identification requirements established by the City or required under law, and (ii) will take all necessary actions required by the City so that it will be in compliance with its obligations under this Agreement or as may be required by the City so that the City remains in compliance with its obligations to CMHC under the CMHC Agreement;

(j) be, and cause the Units and any property on which the Units will be constructed and operated to be, at all times in compliance with all Applicable Laws including environmental laws and zoning, in all material respects;

(k) at the sole cost and expense of the Recipient, cause the Units and any property on which the Units will be constructed and operated to be, and at all times during the Term of this Agreement, maintained to such a standard as to be reasonable for a premises of similar nature and character in the City of Fredericton and for all equipment to be maintained with a regularly scheduled preventative maintenance/service schedule for all hot water, heating and air conditioning systems and equipment within the Units, including the regular servicing, replacement of filters, replacement or adjustment of drive belts, periodic lubrication and oil change and any other services which may be suggested by an equipment manufacturer of equipment installed in the Units; and

(l) provide such financial and other information or documents relating to the Recipient as the City may reasonably require. For greater certainty, any financial or other information or documents relating to the Recipient or the project which the City requires so as to satisfy a request of CMHC shall be deemed to be a reasonable requirement under this section.

The City agrees it will:

(m) Upon the receipt of any Funding Advance Request, the City agrees that it will evaluate such Funding Advance Request, including inspection of the project if the City deems it necessary. Provided the Funding Advance Request meets the requirement of this Agreement and the Recipient is not in default of its obligations under this Agreement, the City shall advance funding within 30 days of receipt of such request.

#### **4. Return of Contribution and Default**

The Recipient agrees to the following:

(a) Where the City considers that there may be reasonable doubt that any part of the Deliverables will be fully and timely delivered as expected, the City may deliver written notice to the Recipient reducing or cancelling the Contribution under this Agreement, in which case the Recipient shall return any Contribution received under this Agreement which exceeds the then approved amount within 30 days of being notified in writing.

(b) The Contribution under this Agreement shall be reduced by the amount of Unused Contribution at the date of the Quarterly Attestation (as defined below) for the quarter in which all projects set out in the Deliverables are completed, and in all cases no later than January 30, 2025, unless otherwise previously agreed in writing by the City. Unused Contribution funding cannot be used to cover cost increases, cost overruns and/or change orders relating to the Deliverables.

(c) The Parties agree that the following shall be considered an event of default under this Agreement:

(i) where the Recipient fails, for any reason, to observe and perform any of the terms, covenants, conditions or agreements of the Recipient under this Agreement and such failure continues for a period of twenty-five (25) days after written notice of such failure is provided to the Recipient;

(ii) where the Recipient fails to deliver any statement, certificate or report required by the terms of this Agreement within the time periods prescribed for its delivery;

(iii) where the term or any of the goods, chattels, or trade fixtures of the Recipient on the property where the project is located are seized or taken in execution or attached by any creditor which is not set aside within twenty-five (25) days;

(iv) where a writ of execution, sequestration or extent issues against the goods, chattels or trade fixtures of the Recipient which is not set aside within twenty-five (25) days;

(v) the Recipient shall purport to make a transfer or grant a security interest affecting the lands and building described in the Deliverables or where such premises are used by any person other than those persons entitled to use them under this Agreement or for any purpose not in compliance with this Agreement;

(vi) where the Recipient makes an assignment for the benefit of creditors or commits any act of bankruptcy as defined in the Bankruptcy and Insolvency Act (Canada) or any successor of it, or becomes bankrupt or insolvent or takes the benefit of any Act now or hereafter in force for bankrupt or insolvent debtors or makes any proposal or arrangement with creditors, or steps are taken for the winding-up or other termination of the Recipient's existence or liquidation of its assets;

(vii) where an order is made for the winding-up or liquidation of the Recipient or the Recipient voluntarily commences winding-up or liquidation procedures;

(viii) where an order or appointment is made for a trustee, receiver, receiver and manager or similar person of the Recipient's business or assets or any part of them;

(ix) where the filing of any involuntary petition by the creditors of the Recipient, which involuntary petition remains undischarged for a period of twenty-five (25) days, or if within twenty-five (25) days after the commencement of any proceeding against the Recipient seeking any reorganization, arrangement, liquidation, dissolution, winding-up or similar relief under any applicable laws, such proceeding shall not have been dismissed;

(x) where termination or the taking of possession of the Deliverables by the City is permitted under any provision of this Agreement; and

(xi) where there is a failure to pay when due any and all utilities and other amounts owing to any supplier, creditor or service provider.

In the event of any default as described in this section which has not been rectified within the allowable time period stated herein (in any case where a time period has not been stated, it shall be twenty-five (25) days), the City shall have the immediate right exercisable by notice in writing to cause the Recipient to transfer immediate and full ownership of the Deliverables to the City for no consideration, together with any rights incidental thereto to accomplish the intent of this paragraph.

## **5. Disposition, Conversion, and Encumbrance of Units**

(a) The Recipient shall not make any Disposition or conversion, or permit any Disposition or conversion to be made, of the Units or any lands acquired with the Contribution, without the prior written consent of the City, who may unreasonably refuse to provide consent at its sole and unfettered discretion and/or impose any conditions it deems necessary and appropriate.

(b) Other than the encumbrance set out on subsection 5(c) below, the Recipient may not Encumber the Units, or any lands acquired with the Contribution, with any Encumbrance in any way whatsoever without the City's prior written consent, which may be unreasonably withheld. In the event an Encumbrance is registered against the lands or Units, the Recipient shall immediately notify the City and take all such steps as are necessary to cause such Encumbrance to be removed without delay.

(c) The Recipient agrees that there shall be an encumbrance registered against the land upon which the Deliverables are constructed and the Units in favour of the City which will contain restrictions consistent with this Agreement and such other customary terms and conditions to preserve the rights of the City under this Agreement, in the form stipulated by the City. Such encumbrance shall contain the right of the City to take full ownership and control of the land and Units for no consideration to the Recipient in the event the Recipient is in default of this Agreement as described in paragraph 4(c) above and fails to rectify such breach within 25 days of being so notified in writing by the City.

## **6. Reporting**

The Recipient agrees it will:

(a) deliver an attestation to the City within 30 days of the end of each quarter of September 30, 2023, December 31, 2023, March 31, 2024, June 30, 2024, September 30, 2024, and December 31, 2024, unless directed otherwise by the City, and in accordance with the quarterly attestation form provided by the City at such time (the “**Quarterly Attestation**”), which is hereby expressly incorporated into this Agreement by reference and the City reserves the right, at its sole discretion, to change, add or remove

portions of the quarterly report form, at any time. It is the responsibility of the Recipient to ensure that the then current quarterly report form is used; and

(b) deliver an attestation to the City within 60 days of the end of the Recipient's fiscal year end, commencing in the first fiscal year ending after December 31, 2024 and on each fiscal year thereafter, unless otherwise directed by the City, until the completion of the Term and in accordance with the yearly attestation form stipulated by the City (the "**Yearly Attestation**"), which is hereby expressly incorporated into this Agreement by reference and the City reserves the right, at its sole discretion, to change, add or remove portions of the yearly report form, at any time. It is the responsibility of the Recipient to ensure that the then current yearly report form is used.

## **7. Schedules**

Schedules attached hereto, including the Schedule A, Definitions, Schedule B, Deliverables and Schedule C, Additional Terms, form a part of this Agreement.

**[The remainder of this page is intentionally blank. Signature page to follow.]**

**IN WITNESS WHEREOF** the Parties hereto have duly executed this Agreement as of the date first written above.

**THE CITY OF FREDERICTON**

397 Queen St.  
Fredericton, NB  
E3B 1B5

**By:** \_\_\_\_\_  
**Name:** Kate Rogers  
**Title:** Mayor

**By:** \_\_\_\_\_  
**Name:** Jennifer Lawson  
**Title:** City Clerk

**THE JOHN HOWARD SOCIETY OF FREDERICTON, INC.**

294 Main St.  
Fredericton, NB  
E3A 1C9

**By:** \_\_\_\_\_  
**Name:** John Barrow  
**Title:** Executive Director

*[Signature page for the Affordable Housing Funding Contribution Agreement  
between the City of Fredericton and The John Howard Society of Fredericton, Inc.]*

## **SCHEDULE A**

### **Definitions**

**"Affordability Criteria"** means:

All Units must serve and be (i) affordable such that the household is paying less than 30% of gross income on housing costs or the shelter component of any provincial or territorial income assistance program as an equivalent, (ii) to targeted People and Populations Who Are Vulnerable and (iii) who are also, or otherwise would be, in severe housing need or people experiencing or at high risk of homelessness as described below. Affordability must be maintained for a minimum of 20 years. The Recipient will be required to confirm, through an attestation, that all units serve the intended targeted population. The City may require incremental validation throughout the 20-year affordability period as needed.

A household in severe housing need is a subset of core housing need households that pays 50% or more of its total before tax income for their current dwelling. A household is said to be in core housing need if its housing falls below at least one of the adequacy, affordability or suitability standards and it would have to spend 30% or more of its total before tax income to pay the median rent of alternative local housing that is acceptable (meets all three housing standards).

Homelessness is described as the situation of an individual, family or community without stable, safe, permanent, appropriate housing, or the immediate prospect, means and ability of acquiring it. Populations at imminent risk of homelessness are defined as individuals or families whose current housing situation will end in the near future (for example, within 2 months) and for whom no subsequent residence has been established.

**"Agreement"** has the meaning set out on the top of page 1 of this Agreement.

**"Applicable Laws"** means, with respect to any person, property, transaction or event, all present or future applicable laws, statutes, regulations, rules, orders, codes, treaties, conventions, judgments, awards, determinations and decrees of any governmental, regulatory, fiscal or monetary body or court of competent jurisdiction in any applicable jurisdiction. For avoidance of doubt, Applicable Laws includes Environmental Laws.

**"Contribution"** has the meaning set out in section 1 of this Agreement.

**"Construction Insurance Coverage"** means:

1. General liability insurance with limits of not less than \$10,000,000 per occurrence, an aggregate limit of not less than \$10,000,000 within any policy year with respect to completed operations, and a deductible not exceeding \$10,000. The insurance coverage shall not be less than the insurance provided by IBC Form 2100 (including an extension for a standard provincial and territorial form of non-owned automobile liability policy) and IBC Form 2320. To achieve the desired limit, umbrella or excess liability insurance may be used. Subject to satisfactory proof of financial capacity by the contractor, the Recipient may agree to increase the deductible amounts.
2. Automobile liability insurance in respect of vehicles that are required by law to be insured under a contract by a Motor Vehicle Liability Policy, shall have limits of not less than

\$10,000,000 inclusive per occurrence for bodily injury, death and damage to property, covering all vehicles owned or leased by the contractor. Where the policy has been issued pursuant to a government-operated automobile insurance system, the contractor shall provide the Recipient with confirmation of automobile insurance coverage for all automobiles registered in the name of the contractor.

3. "Broad form" property insurance shall have limits of not less than the sum of 1.1 times the contract price and the full value, as stated in the contract, of products and design services that are specified to be provided by the Recipient for incorporation into the project work, with a deductible not exceeding \$10,000. The insurance coverage shall not be less than the insurance provided by IBC Forms 4042 and 4047 or their equivalent replacement. Subject to satisfactory proof of financial capability by the contractor, the Recipient may agree to increase the deductible amounts.
4. Boiler and machinery insurance shall have limits of not less than the replacement value of the permanent or temporary boilers and pressure vessels, and other insurable objects forming part of the project work. The insurance coverage shall not be less than the insurance provided by a comprehensive boiler and machinery policy including hot testing and commissioning.
5. Contractors' equipment insurance coverage written on an "all risks" basis covering construction equipment used by the contractor for the performance of the project work, shall be in a form acceptable to the Recipient and shall not allow subrogation claims by the insurer against the Recipient. Subject to satisfactory proof of financial capability by the contractor for self-insurance, the Recipient may agree to waive the equipment insurance requirement.
6. Contractors' Pollution liability insurance shall have limits of not less than \$5,000,000 per occurrence for bodily injury, death and damage to property.

**"Deliverables"** has the meaning set out in the recitals on page 1 of this Agreement.

**"Disposition"** means, with respect to a Recipient, any sale, assignment, transfer, conveyance, lease, licence or other disposition of any nature or kind whatsoever of any property or of any right, title or interest in or to any property.

**"Encumber"** means to attach an Encumbrance to property.

**"Encumbrance"** means any charge, claim, community property interest, pledge, condition, equitable interest, lien (statutory or other), option, security interest, mortgage, easement, encroachment, right of way, right of first refusal, or restriction of any kind, including any restriction on use, voting, transfer, receipt of income or exercise of any other attribute of ownership.

**"Environmental Laws"** means all requirements of the common law or of statutes, regulations, by-laws, ordinances, treaties, judgments and decrees, and (to the extent that they have the force of law) rules, policies, guidelines, orders, approvals, notices, permits, directives, and the like, of any Governmental Authority in the Province of New Brunswick relating to environmental or occupational health and safety matters (as they relate to exposure to a hazardous substance) and the assets and undertaking of a Person and the intended uses thereof in connection with such matters, including all such requirements relating to: (a) the protection, preservation or remediation of the natural environment (the air, land, surface water or groundwater); (b) solid, gaseous or liquid waste generation, handling, treatment, storage, disposal or transportation; (c) consumer, occupational or public safety and health (as they relate to exposure to a hazardous substance); and (d) hazardous substances or conditions (matters that are prohibited, controlled or otherwise regulated, such as contaminants, pollutants, toxic substances, dangerous goods,

wastes, hazardous wastes, liquid industrial wastes, hazardous substance, petroleum and other materials such as urea formaldehyde and polyurethane foam insulation, asbestos or asbestos-containing materials, polychlorinated biphenyls (PCBs) or PCB contaminated fluids or equipment, lead based paint, explosives, radioactive substances, petroleum and associated products, above ground and underground storage tanks or surface impoundments).

**“Funding Advance Request”** means a requests from the Recipient to the City which meets the requirements of the City to establish that the Recipient has met the milestone requirements set out in the Deliverables for the advancement of funds and that establishes that the Recipient is in compliance with all Applicable Laws as of such date. All Funding Advance Requests from the Recipient shall be in the form stipulated by the City and attested to by an officer of the Recipient.

**“Governmental Authority”** means any national, provincial or local government, and any department, commission, board, bureau, agency, official or other regulatory administrative or governmental authority thereof.

**“Hard Costs”** means any amounts expended or to be expended for work, services or materials done, performed, placed or furnished in connection with the construction of the project described in the Deliverables, all as more particularly set out in the project budget provided by the Recipient to the City (and, for the avoidance of doubt, Hard Costs shall not include amounts payable pursuant to the terms of any consultant contract).

**“Liability and Property Insurance Coverage”** means an insurance policy or policies obtained by the Recipient that shall:

- a) Be taken out with insurers acceptable to the City;
- b) Be in a form and on terms satisfactory to the City, from time to time;
- c) Be non-contribution with, and will apply only as primary and not as excess to any other insurance available to the City;
- d) Be written on an occurrence basis, except for environmental liability insurance issued on a claims-made or hybrid basis, or as otherwise consented to by the City in writing prior to the issuance, amendment, or renewal of such policy;
- e) Include the City as an additional insured;
- f) Include an undertaking by the insurer in each policy not to cancel or make a material change to the policy without first giving the City thirty (30) days’ prior written notice of cancellation, termination or material change;
- g) Not contain a co-insurance clause for property insurance policies;
- h) Contain a waiver in favour of the City of any breach of warranty clause such that the insurance policies in question shall not be invalidated as respects the interests of the City by reason of any breach or violation of any warranties, representations, declarations or conditions contained in the policies;
- i) Contain a waiver by the insurer of subrogation against the City whether the damage is caused by the act, omission or negligence of the City;
- j) Be with insurers licensed to do business in the Province of New Brunswick;
- k) Include real and personal property insurance covering loss or damage to the building forming the Deliverables and personal property of the Recipient in an amount equal to the full replacement cost thereof, from “all risks” (as such term is used in the insurance industry in

- the province of New Brunswick) and additional perils including, without limitation, fire, flood, earthquake, sewer back-up, and collapse;
- l) Include comprehensive broad form boiler and machinery insurance on all boilers, elevators, mechanical and electrical equipment servicing buildings, and all other pressure vessels, machinery, equipment, and objects located on the premises that are insurable under such type of policy, on a blanket repair or replacement basis, with limits for each accident in an amount not less than the full replacement cost of all the property insured for and against all risks and additional perils which are insured for under the policies described in this definition;
  - m) Include commercial general liability insurance on an occurrence basis, covering all claims and liability, including personal injury liability, bodily injury liability, contractual liability, non-owned automobile liability, employer's liability and owners' and contractors' protective insurance coverage with respect to the premises and the use of same, with coverage to include the activities and operations conducted by the Recipient and any other person. Such policy shall:
    - a. Be written on a comprehensive basis with inclusive limits not less than Ten Million Dollars (\$10,000,000.00) for any one occurrence;
    - b. Contain a severability of interests clause and cross-liability clause; and
    - c. Without limiting the foregoing, the contractual liability endorsement shall cover the performance by the Recipient of the indemnities given by it in this Agreement and all other insurable obligations of the Recipient under this Agreement, however, the limit of this, or any other insurance policy, shall not limit the liability of the Recipient under the indemnities given by it in this Agreement or liabilities under any other provisions of this Agreement; and
  - n) Include environmental liability insurance, in an amount as would a prudent landowner carrying on such use, including, without limitation, coverage for clean-up costs and business interruption for environmental destruction, pollution and migration of contamination, on a claims-made basis.

**"Parties"** and **"Party"** have the meanings set out on page 1 of this Agreement.

**"People and Populations Who Are Vulnerable"** means the following groups and the individuals belonging to these groups:

- Women and children fleeing violence;
- Seniors;
- Young adults;
- Indigenous peoples;
- People with disabilities;
- People dealing with mental health and addiction issues;
- Veterans;
- LGBTQ2+;
- Racialized groups, including Black Canadians;
- Recent immigrants especially refugees; and
- Homeless people or those at risk of homelessness.

**"Person"** means any individual, corporation, firm, association, partnership, limited liability company or other legal entity or other form of business organization.

**“Quarterly Attestation”** has the meaning set out in subsection 6(a) of this Agreement.

**“Recipient”** has the meaning set out on page 1 of this Agreement.

**“Units”** has the meaning set out in the recitals on page 1 of this Agreement.

**“Unused Contribution”** means the amount of Contribution, less the amount paid by the City to the Recipient under Funding Advance Requests accepted by the City.

**“Yearly Attestation”** has the meaning set out in subsection 6(b) of this Agreement.

**SCHEDULE B****Deliverables**

Develop, construct and operate the Project in accordance with the following requirements:

- i) Affordability - maintain the affordability of the Project for 20 years, ensuring the tenants occupying the units:
  - a. spend less than 30% of their gross income on the applicable unit or the shelter component of any provincial or territorial income assistance as an equivalent; and
  - b. be composed of individuals and families who are, or otherwise would be, in severe housing need, or people experiencing or at high risk of homelessness.

(the "Affordability Standard")

- ii) Serving people and populations who are vulnerable - ensure all units are serving people and populations who are vulnerable<sup>1</sup>, and make reasonable efforts to maintain a distribution of 8 units among the following groups<sup>2</sup>:
  - a. 4 units for Newcomers (including refugees)
  - b. 2 units for Women and children fleeing violence
  - c. 2 units for Black Canadians

Type of intervention: Modular Construction

- iii) Among the number of units targeting the vulnerable populations listed in ii) above, the Recipient will make reasonable efforts to ensure that the units below are occupied by the following priority groups<sup>3</sup>:
  - a. 6 units for women and/or women and their children
  - b. 2 units for Black Canadians
  - c. 0 units for Indigenous people
- iv) Accessibility - ensure that the Project exceeds by 5% the local accessibility requirements in its jurisdiction (the "Accessibility Standard");
- v) Energy Efficiency - ensure the Project exceeds by 5% the energy efficiency standards as set out in the 2015 National Energy Code for Buildings (NECB) or local/regional standard whichever is greater (the "Energy Efficiency Criteria");
- vi) Project start date: July 3, 2023;  
Reach project completion by: November 1, 2024;
- vii) Project location: 350 Cliffe Street, Fredericton, New Brunswick, E3A 0Y9

<sup>1</sup> People and populations who are vulnerable include:

Homeless people or those at risk of homelessness, Women and their children fleeing violence, Black Canadians, Indigenous peoples, Racialized groups, Seniors, Young adults, People with disabilities, People dealing with mental health and addiction issues, Veterans, LGBTQ2+, and Recent immigrants or refugees

<sup>2</sup> Any change to the distribution of units among people and populations who are vulnerable must be disclosed in the annual attestation to CMHC.

<sup>3</sup> CMHC will determine compliance with paragraph (iii) on a "portfolio basis" where the Deliverables consist of more than one project.

**SCHEDULE C**  
**Additional Terms**

Parties agree to the following additional terms and conditions:

**1. Termination and Dispute Resolution**

In the event that the Recipient (or a representative thereof) does not adhere to the terms and conditions of this Agreement, or commits fraud, misconduct, criminal acts, gross negligence or willful misconduct, the City may immediately terminate this Agreement and declare the Contribution to be repayable to the City in whole or in part, and may exercise any other rights and remedies it has under this Agreement, by operation of law or equity, including the City's right to have the Deliverables transferred to the City for no consideration.

Without in any way limiting the City's rights of termination described above, the Parties agree to the following dispute resolution provisions:

If a dispute arises between the City and the Recipient arising out of or relating to this Agreement, or the subject matter hereof, the City and the Recipient agree that they shall each make all reasonable efforts to resolve any such dispute on a timely basis through amicable negotiations. Disputes shall promptly be referred by each Party to their respective senior management representatives who have the authority to resolve and settle any such disputes on their behalf. In the event that such representatives cannot resolve the dispute within ten (10) days or such longer period as the Parties may agree in writing, either Party may elect, upon giving prior written notice to the other Party, to resolve the matter through mediation or arbitration by a mutually acceptable mediator or arbitrator in accordance with the Arbitration Act, SNB, 2014, c. 100, as amended or litigation proceedings in the courts of the Province of New Brunswick. Notwithstanding the foregoing, nothing in this Schedule C, Section 1 shall prevent the City from exercising its rights of termination set out under this Agreement in the circumstances described therein. It is further agreed by the Parties that they shall pay their own costs of any mediation, arbitration or litigation.

**2. Indemnification**

The Recipient agrees to indemnify and save harmless the City, the Government of Canada, Canada Mortgage and Housing Corporation, their officers, directors, councilors and employees against all claims, demands, actions, suits or other proceedings (including but not limited to environmental claims) of any nature whatsoever arising from or as consequence of or relating to (a) any breach by the Recipient of its obligations, or any misrepresentation by the Recipient under this Agreement, (b) the construction or operation of the Units, (c) the failure of the Recipient to comply with all environmental laws or losses suffered in connection with the presence of any hazardous material on the land upon which Units are situated; or (d) any act or failure to act on the part of the Recipient in connection with the Contribution or the Units, whether or not the City or CMHC is named as a Party.

**3. Liability**

The Parties confirm that the City has not made any representation or warranty to the Recipient concerning the viability of the project described in the Deliverables and nothing in this Agreement

relieves the Recipient from the obligation to complete such due diligence as is necessary to form their own opinions and conclusions with respect to the viability of the Deliverables. The City shall have no liability to the Recipient or any other party in relation to this Agreement for any damages, including, without limitation, direct, indirect, and special or punitive damages, arising out of or otherwise relating to the Deliverables, the Recipient's participation in this Agreement and the development of the project, the City refusing to provide any consent requested by the Recipient under this Agreement or the City's acts or omissions in connection with the administration of this Agreement. This limitation applies to all possible claims by the Recipient, whether arising in contract, tort, equity, or otherwise, including, without limitation, any claim for a breach by the City of a duty of fairness or relating to a failure by the City to comply with the terms set forth in this Agreement.

#### **4. Recipient's Representations and Warranties**

(a) The Recipient has the requisite power, authority and capacity to execute, deliver and perform its obligations under this Agreement, which has been duly authorized, executed, and delivered by the Recipient and constitutes a legal, valid, and binding obligation of the Recipient.

(b) The Recipient and any property on which the Units are situated are owned by the Recipient, or will be owned by the Recipient prior to the commencement of the project, the property on which the Units will be situated will remain owned by the Recipient during the Term of this Agreement, and such property is in compliance with all applicable laws, including all environmental laws and municipal zoning, in all material respects.

(c) The Recipient represents and warrants that the Recipient has not and will not borrow any funds for the completion or operation of the Deliverables and the Recipient has sufficient funds that, when combined with the Contribution, will allow for the completion of the Deliverables and has additional resources to cover any required contingency amount for cost over-runs.

(d) It is a condition of this Agreement that all representations and warranties made in this Agreement or any other document or reporting by the Recipient are true, complete and correct.

#### **5. Official Languages**

The Parties agree that all information exchanged between the City and Recipient shall be in the English language. Where the City indicates it is necessary, the Recipient agrees to provide all information and services pertaining to the Units in both French and English.

#### **6. Information and Communications**

(a) All documents including proposals submitted to the City will be subject to provisions and disclosure requirements under the *Right to Information and Protection of Privacy Act* (New Brunswick). In addition, all information provided by the Recipient to the City may be provided by the City to the Canada Mortgage and Housing Corporation, which information will be subject to the *Access to Information Act* (Canada), the *Privacy Act* (Canada) and the applicable provincial, territorial or municipal freedom of information and privacy legislation.

(b) Subject to the *Right to Information and Protection of Privacy Act* (New Brunswick), the *Access to Information Act* (Canada), the *Privacy Act* (Canada), and the applicable provincial, territorial or municipal freedom of information and privacy legislation, the Parties shall hold confidential any information clearly

identified and marked as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Nothing in this Agreement shall be construed in a manner that would contravene the access to information and privacy legislation that applies to the Parties.

(c) The Recipient consents to the collection, use and disclosure of information submitted to the City by the Recipient for the following purposes: (i) to provide that information to the Canada Mortgage and Housing Corporation to assess the project's eligibility under its Rapid Housing Initiative program and the CMHC Agreement; (ii) for analytics, policy analysis, auditing and research by the City and or the Canada Mortgage and Housing Corporation; (iii) to communicate to the Recipient possible opportunities under other programs, or possible collaboration opportunities with third parties; (iv) for evaluation of the Rapid Housing Initiative of the Canada Mortgage and Housing Corporation; (v) for use by Canada Mortgage and Housing Corporation in and the Government of Canada for purposes related to the *National Housing Act* (Canada); and (vi) for information verification and due diligence purposes, including to detect and protect City and the Canada Mortgage and Housing Corporation from errors and fraud. The Recipient shall obtain the foregoing consents from any third party intermediary engaged by the Recipient to construct and/or operate the Units.

(d) The City and its representatives are authorized to use and disclose the information, on a need to know basis, to City employees, officers, directors and councilors, the Canada Mortgage and Housing Corporation and its employees, officers and directors, the office of the Minister responsible for Canada Mortgage and Housing Corporation and provincial/territorial/municipal entities collaborating with the Canada Mortgage and Housing Corporation for the purposes outlined in Section 6(c) of this Schedule C.

(e) Any public communications related to projects under this Agreement must be approved in advance by the City.

(f) If requested by the City, the Recipient shall publicly acknowledge City's and/or Canada Mortgage and Housing Corporation's and the Government of Canada's Contribution under this Agreement in a manner acceptable to such party, acting reasonably, including through use of signage at the project.

## **7. Audit**

(a) The City and the Canada Mortgage and Housing Corporation and any of their officers, employees and agents shall have the right to inspect, audit and make extracts from the Recipient's books and records in relation to the Contribution upon its request, acting reasonably, until the completion of the Term.

(b) The City, Canada Mortgage and Housing Corporation or a third party representative may conduct onsite visits to inspect and monitor the construction and operation of the Units and compliance with the terms and conditions of this Agreement. All site visits are for program and risk management purposes only and are not to be considered a technical inspection to confirm the quality of the work or the Recipient's compliance with applicable laws, including building codes.

## **8. Notice**

Delivery of notice under this Agreement shall be effective three days after posting by regular mail, or on the day following transmission by e-mail, to the Parties at addresses set out on the signature pages of this Agreement.

**9. Independent Recipient**

The Parties agree that under this Agreement the City is solely a financial contributor in respect of the Units and there shall be no legal partnership or joint venture between the City and the Recipient. No Party will use the name, logo or marks of the other Party without the prior express written consent of that other Party.

**10. Costs**

The Recipient is responsible for its own costs and expenses incurred in connection with the preparation, execution, enforcement and implementation of this Agreement.

**11. Conflict of Interest**

The Recipient shall not permit an actual or potential conflict of interest to arise between its obligations to the City under this Agreement and its obligations to any third party. In addition, the Recipient shall not permit an actual or potential conflict of interest to arise between members of the Recipient and any third parties in the carrying out of the Deliverables as described in this Agreement. The Recipient shall immediately notify the City in writing if any such potential or actual conflict of interest should arise at any time during the Term.

In this Agreement, conflict of interest means:

- (a) The Recipient or any officer, director or employee of the Recipient, and all of their immediate family members, has an unfair advantage or engages in conduct, directly or indirectly, that may give it, them or their family members an unfair advantage, including but not limited to
  - (i) having, or having access to, confidential information of the City or the Recipient in the preparation of the Recipient's proposal or any proposal made to the Recipient by a third-party that is not available to other parties; (ii) communicating with any person with a view to influencing or obtaining preferred treatment (including, but not limited to, the lobbying of decision makers); or (iii) engaging in conduct that compromises or could be seen to compromise the integrity of the Agreement, the awarding of contracts by the Recipient or provision of the services as part of the Deliverables; or
- (b) In relation to the performance of its contractual obligations contemplated in the Agreement that is the subject of this procurement, the Recipient's, together with its officers directors and employees, as well as their immediate family members, other commitments, relationships or financial interests (i) could or could be seen to, exercise an improper influence over the objective, unbiased and impartial exercise of its independent judgement; or (ii) could or could be seen to, compromise, impair or be incompatible with the effective performance of its contractual obligations.

**12. House of Commons/Senate**

No member of the House of Commons or the Senate of Canada shall be admitted to any share or part of this Agreement or to any benefit arising therefrom.

**13. Assignment and Amendment**

This Agreement shall be binding upon and shall enure to the benefit of the Parties and their successors and assigns.

The Recipient shall not assign this Agreement or any of its rights or obligations hereunder or subcontract the performance of any services required hereunder without the prior written consent of the City, which consent may be unreasonably withheld by the City, in its sole discretion. Any purported assignment or subcontracting by the Recipient without such consent shall be of no force or effect.

The City's consent to an assignment of this Agreement or the subcontracting of the performance of any of the services to be provided by the Recipient hereunder, shall not relieve the Recipient from any of its obligations under this Agreement and the Recipient shall, notwithstanding any such consent by the City, remain responsible for the performance of all of its obligations set out herein.

The Recipient shall only engage subcontractors or personnel that are qualified and competent to perform the services required under this Agreement in a timely, efficient and professional manner.

The Recipient shall include in every agreement an obligation of its subcontractors to comply at all times with the confidentiality, protection and handling of personal information requirements of this Agreement.

The Recipient shall ensure that no approved subcontractor who cannot comply with the confidentiality, protection and handling of personal information requirements of this Agreement has any access, custody or use of any personal information or confidential information as defined under this Agreement.

The Recipient shall remain responsible to the City for the services required under this Agreement including any services performed by a subcontractor. Where the Recipient uses subcontractors, it is doing so under the condition to the City that it shall remain responsible for such subcontractors and shall remain liable for the performance of the assigned or delegated obligations hereunder.

**14. Counterparts**

This Agreement may be executed in any number of counterparts, which taken together will be deemed to constitute one and the same instrument. This Agreement may be executed by electronic signature and such electronic signature shall be deemed to be an original signature for the purpose of this Agreement with the same legal effect as a manual signature.

**15. Waiver**

The failure of the City to insist on strict compliance with one or more of the terms of this Agreement shall not constitute a waiver of its right to enforce those terms at a later date. No provision of this Agreement shall be deemed to have been waived as a result of a breach by either Party of the provisions of this Agreement, unless such waiver is in writing and signed by the City. Any such waiver shall not be deemed a waiver for a subsequent breach of the same or any other provision of this Agreement.

**16. Invalidity of Provision**

The invalidity or unenforceability of any provision of this Agreement or any covenant in it shall not affect the validity or enforceability of any other provision or covenant in it and the invalid provision or covenant shall be deemed to be severable.

**17. Costs**

It is acknowledged and agreed that each Party shall pay his own costs, charges and expenses of and incidental to the preparation of this Agreement.

**18. Survival**

Any provision of this Agreement which expressly or by implication from its nature is intended to survive the termination or completion of the Agreement will continue in full force and effect after any termination, expiry or completion of the Agreement. More specifically, neither the expiry nor the earlier termination of this Agreement shall relieve or be deemed to relieve, a Party from any duties, obligations or liabilities hereunder that accrued prior to such expiration or termination.

**19. Contra Proferentem Rule Not Applicable**

Should any provision of this Agreement require judicial interpretation, mediation or arbitration, it is agreed that the court, mediator or arbitrator interpreting or construing the same shall not apply a presumption that the terms thereof shall be more strictly construed against one Party by reason of the rule of construction that a document is to be construed more strictly against the Party who itself or through its agent prepared the same, it is agreed that both Parties, directly or through their agents, have participated in the preparation hereof.

**20. Independent Legal Advice**

The Parties acknowledge and agree that they have received independent legal advice with respect to the drafting of this Agreement and their obligations hereunder, or that they have had the opportunity to seek independent legal advice and the opposite Party has specifically recommended such Party to do so and both Parties understand and acknowledge that this Agreement contains terms specifying significant consequences of default.

**21. Governing Law and Jurisdiction**

This Agreement will be governed by and construed in accordance with the laws of the province of New Brunswick and the federal laws of Canada applicable therein. The courts of such jurisdiction shall exclusively hear any dispute related to this Agreement. Funding under this Agreement is at all times subject to the City receiving funding from the Canada Mortgage and Housing Corporation under the CMHC Agreement.

**22. Entire Agreement**

This Agreement contains all of the agreements and understandings between the Parties and no other representations or warranties, verbal or otherwise, exist between the Parties. If any provision of this

Agreement is held by a competent authority to be invalid, illegal or unenforceable for any reason, the remaining provisions of this Agreement and any schedules attached hereto, will continue to be in full force and effect.

**23. Counterparts**

This Agreement may be signed by the City and the Recipient in one or more counterparts (in original or electronic form), each of which when signed and delivered will be deemed an original, but all of which together will constitute one and the same instrument; however, this Agreement will be of no force or effect until executed by all Parties. Executed signature pages delivered by facsimile or electronic mail will be deemed for all purposes to be original counterparts of this Agreement.