

CONSERVATION MEMORANDUM OF UNDERSTANDING

Memorandum of Understanding (“MOU”) is made in duplicate on ___ day of _____, 2022 (“Effective Date”).

BETWEEN:

THE CITY OF FREDERICTON, a local government corporation duly incorporated under the laws of the Province of New Brunswick and having its head office at 397 Queen Street, Fredericton, New Brunswick, E3B 1B5 (hereinafter “The City”)

-and-

DUCKS UNLIMITED CANADA, a corporation having its head office at Oak Hammock Marsh Conservation Centre, 1 Mallard Bay, Stonewall, Manitoba (hereinafter “DUC”)

(Collectively referred to as the “Parties” and individually as a “Party”)

WHEREAS The City owns park lands throughout the municipality of Fredericton, County of York, Province of New Brunswick;

AND WHEREAS The City owns various parcels of land, namely parks, along the Saint John River (hereinafter “Lands”), as identified in Schedule “A” attached hereto;

AND WHEREAS DUC wishes to support a habitat for wildlife and waterfowl through the installation of cavity nest boxes (hereinafter “Project”) on certain portions of the said Lands;

AND WHEREAS the Parties agree mutual benefits will result from the Project;

NOW THEREFORE IN CONSIDERATION of the mutual covenants and agreements set out in this Agreement and subject to the terms and conditions set out below, the Parties hereby covenant and agree as follows:

1. OBJECTIVE

- 1.1 The Project aims to increase nesting opportunities for cavity nesting duck species, including but not limited to wood duck and hooded merganser, along the Saint John River in the City of Fredericton.

2. MOU PURPOSE

2.1 This MOU will serve to outline the roles and the responsibilities The City and DUC during the term of this MOU.

2.2 This MOU is not intended to, and does not, create a legal partnership or joint venture relationship between the Parties. Neither Party is authorized to act as an agent for the other Party in the course of carrying out the Project and may not in any way bind the other Party and shall take all steps necessary to ensure that any third party involved in the carrying out and completion of the Project are aware that neither Party is authorized to act as an agent for the other Party nor bind the other Party in any way.

3. TERM AND TERMINATION

3.1 This MOU shall be for a Term of ten (10) years from the Effective Date noted above. For greater certainty, this MOU will end on November 1, 2031 (“Initial Term”).

3.2 The City may extend this MOU for a further term of up to five (5) years upon written notice to DUC six (6) months prior to the end of the initial term (“Extended Term”).

3.2 The City reserves the right to terminate this MOU for any reason upon giving DUC three (3) months’ notice in writing.

4. ROLES AND RESPONSIBILITIES

4.1 The City shall:

- (a) Allow DUC staff or their representatives, if required, for the purposes of this MOU and with notice to The City, to enter onto the Lands for any purpose related to this MOU.
- (b) Allow nest boxes to be installed, maintained and monitored according to DUC specifications as set out in the Management Plan, attached hereto as Schedule “B” and forming part of this MOU.
- (c) Notify DUC of any change in the Lands ownership or designation.
- (d) Advise DUC to remove nest boxes should the City be required to do any work in the area.
- (e) Allow DUC the right to share the name and address of The City and the Project location with project funders including the federal and/or provincial government where applicable.
- (f) Grant DUC permission to use photographs and/or video footage of the Project in print, digital, video or web-based format, with the understanding that DUC will not disclose The City’s name and/or specific address details without further written consent.

4.2 DUC shall:

- (a) Provide the City documents showing or indicating the location of nest boxes on the Lands annually.
- (b) DUC staff or their representatives, if required, shall provide notice to the City prior to entering onto the Land for any purpose related to this MOU.
- (c) DUC staff or their representatives, shall abide the provisions in By-law No. L-18, *A By-law for the Management of Trees Within the City of Fredericton*, when installing and maintaining the nest boxes and shall not damage or destroy any trees located on said Lands.
- (d) Abide any order or direction from the City with respect to the placement or removal of nest boxes.
- (e) Ensure the placement of nest boxes does not hamper, impede, or encumber the City's work, responsibilities, or obligations on the said Lands.
- (f) Remove all nest boxes and any material associated with said nest boxes from the Lands upon the termination of this MOU.
- (g) Provide the City with an annual report on the project.
- (h) Provide the City with a certificate of general liability insurance against claims for bodily injury including death, personal injury and property damage or loss, indemnifying and protecting The City, its directors, employees, servants, agents and invitees to the inclusive limit of not less than two million dollars (\$2,000,000.00) per occurrence. The City of Fredericton shall be named as an additional insured on this policy.

4.3 The Parties accept and agree that the Lands or portions thereof identified herein may be designated as protected areas under municipal, provincial or federal legislation. As such, DUC will obtain all required permits prior to installing any cavity nest boxes on said Lands.

5. INDEMNIFICATION AND LIMITATION OF LIABILITY

- 5.1 Each Party accepts full responsibility for the safety and protection of their employees and volunteers and has no obligation to those of the other Party.
- 5.2 Each Party is responsible for the protection of their equipment and shall not hold the other Party liable for loss or damage, whether by theft or by fire or by its use in the performance of the work associated with this MOU.
- 5.3 Each Party hereby indemnifies, holds harmless and defends the other Party, including each of the agents, officers, directors, employees and volunteers of the Parties, against any and all actions, claims, loss, damage and liability connected with the said Project, works or the

provisions thereof as contemplated herein, arising directly out of the adequacy, sufficiency, design, construction, installation, erection, excavation, use, maintenance, improvement, alteration, inspections, replacement, repair, destruction, removal, failure and obligation of the said Project (including negligent acts or omissions) and without limiting the generality of the foregoing, any damages or losses, consequential or otherwise, arising from or out of same, howsoever the same may arise.

6. FUNDING

6.1 This MOU is not a commitment of funds between the Parties.

7. NOTICES

7.1 Any notice, demand, request or other communication ("Notice") required or permitted to be given to either Party under this MOU shall be in writing and shall be satisfactorily given by personal delivery, registered mail or by electronic means of communication, addressed to the recipient as follows;

The City: Parks and Trees
100 Two Nations Crossing
Fredericton, NB E3A 0H2
Phone: (506) 460-2020
Email: service@fredericton.ca
Attention: Assistant Manager, Parks and Trees

DUC: Ducks Unlimited Canada
752 Union Street
Fredericton, NB E3A 3P2
Phone: (506) 471-9222
Email: k_paillard@ducks.ca
Attention: Kassandra Paillard

8. DISPUTE RESOLUTION

8.1 In the event of a dispute arising from the interpretation or operation of this MOU, it will be referred to the Parties' representatives set out in section 7.1 above, who will use their best efforts to resolve the matter amicably. If such negotiation fails, the Parties intend to refer the matter to: Head of Conservation Programs (DUC) and the Manager of Parks and Trees, or their designate (The City) for resolution.

9. GENERAL

9.1 **Headings:** The headings in this MOU are for ease of reference only; they do not affect its construction or interpretation.

9.2 **Assignment:** Neither Party may assign or transfer this MOU as a whole, or any of its rights

or obligations under it, without first obtaining the written consent of the other Party. That consent may not be unreasonably withheld or delayed.

9.3 **Severability:** If any section or part of a section contained in this MOU shall be judicially held invalid or unenforceable, the remainder of this Agreement shall be interpreted as if such section or part of a section had not been included.

9.4 **Waiver of rights:** If a Party fails to enforce, or delays in enforcing, an obligation of the other Party, or fails to exercise, or delays in exercising, a right under this MOU, that failure or delay will not affect its right to enforce that obligation or constitute a waiver of that right. Any waiver of any provision of this MOU will not, unless expressly stated to the contrary, constitute a waiver of that provision on a future occasion.

9.5 **No agency:** Nothing in this MOU creates, implies or evidences any partnership or joint venture between the Parties, or the relationship between them of principal and agent. Neither Party has any authority to make any representation or commitment, or to incur any liability, on behalf of the other.

9.6 **Entire agreement:** This MOU constitutes the entire agreement between the Parties relating to its subject matter and supersedes all other documents or agreements, whether written or verbal, in respect of the subject matter. Each Party acknowledges that it has not entered into this MOU on the basis of any warranty, representation, statement, agreement or undertaking except those expressly set out in this MOU.

9.7 **Formalities:** Each Party will take any action and execute any document reasonably required by the other Party to give effect to any of its rights under this MOU, or to enable their registration in any relevant territory provided the requesting Party pays the other Party's reasonable expenses.

9.8 **Amendments:** No variation or amendment of this MOU will be effective unless it is made in writing and signed by each Party's representative.

9.9 **Applicable law:** This contract shall be governed by and construed in accordance with the laws in force in the Province of New Brunswick and the applicable laws of Canada. The Parties attorn to the jurisdiction and venue of the courts of New Brunswick in respect of any matter relating to this MOU.

9.10 **Counterparts:** This MOU may be executed in two or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a ".pdf" format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page were an original thereof.

9.11 **Force Majeure:** Neither party to this MOU shall be liable to the other for any failure or delay in performance by circumstances beyond its control, including but not limited to, acts

of God, fire, pandemics, labour difficulties, strikes, lock-outs or governmental action.

9.12 **Successors and Assigns:** This MOU and all of the provisions hereof shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted transferees and assignees.

IN WITNESS WHEREOF the duly authorized representatives of the Parties hereto have executed this MOU as of the Effective Date.

THE CITY OF FREDERICTON

Kate Rogers
Mayor

Jennifer Lawson Murray
City Clerk

DUCKS UNLIMITED CANADA

Kassandra Paillard
Conservation Program Specialist, Nest Box Coordinator
Ducks Unlimited Canada
**I am duly authorized to bind the corporation*

SCHEDULE "A"

LANDS OWNED BY THE CITY OF FREDERICTON

PID	CIVIC ADDRESS
01428481	Gibson Street
01476951	Gibson Street
75009803	Ring Road
75431718	975, 980, 985 Barker Street
75009225	1, 20 Riverside Drive & 1 Watters Drive
75438465	Hargrove Court
75322107	40 Riverside Drive
75271635	50 Riverside Drive
75013656	92 Greenwood Drive
75013649	Greenwood Drive
01506476	Greenwood Drive
75013631	Greenwood Drive
01558204	Eatman Avenue
01506468	Greenwood Drive
01471168	265 Waterloo Row
01473248	773 Waterloo Row
75297002	Lincoln Road
01486711	Lincoln Road
01473255	363, 367, 369 Lincoln Road
01473263	399, 499 Lincoln Road
75417352	396 Lincoln Road
75349399 *	Dunn's Crossing Road to Sunbury Line
75298851	Ring Road
75457440	Thompson Drive
75336677	11 McGloin Street
01548692	11 McGloin Street
01553635	15 McGloin Street
75268441	River Street
01493576	300 Canada Street
75372276	135 River Street

01498229	79 River Street
01499185	164 River Street
75328062	532 Canada Street
75328070	Canada Street
75426353	556 Canada Street
01550102	532 Canada Street
01488618	1660, 1670 Saint Mary's Street
75539031	85 McKay Drive
01433374	930 Union Street
75431791	880 Union Street
01433358	Union Street
75417980	Union Street
75333245	526 Union Street
75014472	306 Union Street
75026518	30 Cityview Avenue
01498641	Cityview Avenue
01404565	46 Hillcourt Drive
75344598	South of Main Street
01418557	138 Johnston Avenue
01412444	Burpee Street
01402403	130-A Burpee Street
01414044	Burpee Street
01415033	49 Ferris Street
75252619	Nevers Island

** Land leased to the City*

SCHEDULE “B”
MANAGEMENT PLAN

PROJECT NAME: **City of Fredericton Nest Box Program**

PROJECT NUMBER: **P-000014888-001-001**

This is the Management Plan as referred to in the MOU between City of Fredericton and Ducks Unlimited Canada.

Segment 1 – Habitat Area (Nest Box)

Installation and annual monitoring of the nesting structures will be the responsibility of DUC or a representative of DUC. Inspections of the nesting structures shall be completed during the winter months to prevent undue disturbance to nesting birds and to facilitate easy access to over-water structures. As part of annual inspections, there are three components: maintenance, monitoring and reporting.

Annual maintenance includes minor repairs to any component for the nesting structure, cleanout of old nests and/or nesting material and replacement with 4.5 inches of wood shaving (not sawdust). In the case of major structural calamities occurring within the term of the agreement, DUC will provide a replacement box.

Installation of Nest Box

All installations of nest boxes will abide the provisions under By-law No. L-18, *A By-law for the Management of Trees within the City of Fredericton* (January 13, 2020).

Six-gauge plastic coated wire will be used to secure the box and annual adjustments will be made to ensure no impediment to the growth of the tree.

Number and Location of Nest Boxes

The number of nesting boxes may increase or decrease over the term of the MOU depending on the use by waterfowl.

New boxes will be tracked using GPS location and such locations will be identified in the final report.

PROVINCE OF NEW BRUNSWICK

COUNTY OF YORK

AFFIDAVIT OF CORPORATE EXECUTION

I, Jennifer Lawson, of the City of Fredericton, in the County of York and Province of New Brunswick, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am the City Clerk of the City of Fredericton, one of the parties named in the foregoing instrument and as such I have personal knowledge of the matters herein deposed to.
2. The seal affixed to the foregoing instrument purporting to be the seal of the City of Fredericton is the Corporate Seal of the City of Fredericton and was so affixed by order of the City Council.
3. The signature "Kate Rogers" subscribed to the foregoing instrument is the signature of Kate Rogers, the Mayor of the City of Fredericton, and the signature "Jennifer Lawson" subscribed thereto is my signature.
4. The Mayor and City Clerk are the officers of the City of Fredericton duly authorized to execute the foregoing instrument.

SWORN TO BEFORE ME at the)
City of Fredericton, in the County)
of York and Province of New)
Brunswick, this ___ day of)
_____, 2022.)
)
)
)

A Commissioner of Oaths
Being a Solicitor

)
)
)
)

Jennifer Lawson

PROVINCE OF NEW BRUNSWICK

COUNTY OF YORK

AFFIDAVIT OF CORPORATE EXECUTION

I, **Kassandra Paillard**, of the City of Fredericton, in the County of York and Province of New Brunswick, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am the City Clerk of the City of Fredericton, one of the parties named in the foregoing instrument and as such I have personal knowledge of the matters herein deposed to.
2. The seal affixed to the foregoing instrument purporting to be the seal of Ducks Unlimited Canada is the Corporate Seal of Ducks Unlimited Canada and was so affixed by order of the Board.
3. The signature "Kassandra Paillard" subscribed thereto is my signature.
4. The Conservation Program Specialist is duly authorized to execute the foregoing instrument.

SWORN TO BEFORE ME at the)
City of Fredericton, in the County)
of York and Province of New)
Brunswick, this ___ day of)
_____, 2022.)
)
)
)
)
_____)
A Commissioner of Oaths)
)

Kassandra Paillard