

**This Municipal Housing Project Facilities Agreement made  
this \_\_\_\_ day of \_\_\_\_\_, 2022**

**The Corporation Of The City Of Kawartha Lakes  
(the “City”)**

-and-

**Kawartha Lakes-Haliburton Housing Corporation  
(the “Housing Provider”)**

**Whereas** on December 12, 2017, the Corporation of the City of Kawartha Lakes received Report HH2017-004 titled “City of Kawartha Lakes and County of Haliburton Affordable Housing Framework”;

**And Whereas** pursuant to By-law 2006-262 as amended, (hereinafter referred to as “By-law 2018-057” and the “Housing Facilities By-law”) and consistent with the Affordable Housing Framework, Council was provided authority to pass by-laws permitting the City to enter into municipal housing project facilities agreements with housing providers pursuant to subsection 110 (1) of the *Municipal Act*, S.O. 2001, c.25 and its regulations (and specifically Ontario Regulation 603/06, as amended) for the provision of municipal housing project facilities;

**And Whereas** the Housing Provider has agreed to provide a municipal housing facility on 25Hamilton Street in Lindsay (the “Property”) pursuant to section 110 of the *Municipal Act*, S.O. 2001, c.25, as amended and its regulations (the “*Municipal Act*”) and By-law 2006-262;

**And Whereas** Council has passed a by-law concurrently with this Agreement, permitting the City to enter into this Agreement, being a municipal housing project facilities agreement and to provide financial contributions to the Housing Provider;

**Now Therefore** in consideration of the mutual covenants and agreements contained herein, the parties agree as follows:

**Term**

1. The term of this Agreement shall commence upon execution of this Agreement and terminate one hundred (100) years from the date of occupancy of the last of the units of the housing units to be provided as part of the Municipal Housing Project Facility.

## Definitions

2.(1) Words and phrases used in this Agreement shall have the same meaning as set out in Schedule “A” of By-law 2018-057, unless otherwise defined in this Agreement.

(2) The following words and phrases used in this Agreement shall have the following meanings:

“Affordable Housing Unit” means in respect of the units in the Project,

(a) Ownership housing with a purchase price resulting in annual accommodation costs not exceeding 30% of the gross annual household income of the lowest 60% of households within the service area or is at least 10% below the average resale price of a housing unit within the service area, whichever is the lesser,

(b) Rental housing with a rental rate not exceeding 30% of the gross annual household income of the lowest 60% of renter households within the service area, or is at or below the average rental rate within the service area, whichever is the lesser.

“Affordable Housing Framework” or “AHF” means the City of Kawartha Lakes and County of Haliburton Affordable Housing Framework which includes, among other things, an ownership housing component and rental housing component.

“Agreement” means this Municipal Housing Project Facilities Agreement.

“auditor” means a public accountant as defined in the *Public Accountancy Act*, R.S.O. 1990, c.P.37, as amended, who performs an audit function pursuant to this Agreement.

“CMHC” means Canada Mortgage and Housing Corporation.

“eligibility criteria” means the criteria set out in the definition of low to moderate income household.

“fiscal year” means the fiscal year of the Housing Provider that is a period of twelve (12) consecutive months commencing on the first day of January and ending on the last day of December.

“income” means all income, benefits and gains, of every kind and from every source including an imputed income for all assets or investments which do not produce interest income but are intended to appreciate in value or are given away, all of which must be declared by a household in its application for purchase or rental of an Affordable Housing Unit.

“low to moderate income household” means those households with incomes falling at or below the 60<sup>th</sup> income percentile as published by the City in its role as service manager for the service area.

“Municipal Housing Project Facility” has the meaning contemplated in By-law 2018-057 and for the purposes of this Agreement means the Project.

“Project” means the project described in Schedules “A” and “B”.

“Term” has the meaning set out in Section 1.

“Waiting List” means the City of Kawartha Lakes Centralized Waiting List or City’s Homeless By Name List, or successor waiting list, or any other waiting list as agreed to be Council in the municipal housing project facilities agreement.

### **Schedules**

2.3 The following Schedules are an integral part of this Agreement:

Schedule “A” – Project

Schedule “B” – Financial Resources/Benefits

- 3.(1) Subject to any sections of this Agreement which set higher minimum standards, it is a condition of this Agreement that the Housing Provider operate the Project in accordance with all applicable legislation, by-laws, policies, directives and guidelines of all levels of government.
- (2) Without limiting the generality of subsection (1), if there is a conflict between the Municipal Facilities By-laws and a section of this Agreement, the Municipal Facilities By-laws shall prevail, unless the section of this Agreement sets a higher standard, in which case the Housing Provider shall operate the Project pursuant to that section.

### **Construction of the Project**

- 4.(1) The Housing Provider shall construct the Project as Affordable Housing Units in the manner described in this Agreement, its attached Schedules and all applicable by-laws, legislation and government policies.
- (2) (a) The Housing Provider shall lease, operate and maintain any and all rental housing units in the Project as Affordable Housing Units to persons from the Waiting List who meet the eligibility criteria in the manner described in this Agreement, its attached Schedules and all applicable by-laws, legislation and government policies at its own expense.
- (b) The Housing Provider shall sell any and all ownership housing units in the Project as Affordable Housing Units to persons who meeting the eligibility criteria in the manner described in this Agreement, its attached Schedules and all applicable by-laws, legislation and government policies at its own expense.

- (3) At any time, upon providing the Housing Provider with reasonable prior written notice, and from time-to-time before completion of construction of the Project:

  - (a) the City or any individual authorised by the City may inspect the Project; and
  - (b) the Housing Provider shall co-operate with any individual mentioned in clause (a) by providing access and anything else that may be reasonably required to assist in any such inspection.
5. Subject to the Housing Provider's compliance with the requirements of the Affordable Housing Framework, this Agreement and the requirements of the City, and after having received evidence satisfactory to it that the Affordable Housing Units have been leased and/or sold to persons who meet the eligibility criteria in accordance with this Agreement, the City shall provide the financial resources and relief, pursuant to By-law 2022-XXX, set out in the attached Schedule "B".
6. In the performance of any work and construction on the Project, the Housing Provider shall obtain all necessary permits, consents and approvals at its own expense.
7. In the event that the Housing Provider has not commenced construction of the Project on or before the date which is one hundred and twenty (120) following the signing of this Agreement, the City may, upon written notice to the Housing Provider, terminate this Agreement. The City shall be entitled, at its sole discretion, to modify or extend this date.
8. If at any time prior to completion of construction of the Project or any part thereof, the construction ceases and has not been resumed within ninety (90) days of ceasing, or if the Housing Provider abandons the construction of the Project, the City may, immediately upon written notice to the Housing Provider, terminate this Agreement and all funds, financial resources and relief which have been received by or granted to the Housing Provider up to the date of termination shall immediately be repaid.
9. If substantial performance, within the meaning of the *Construction Lien Act*, R.S.O. 1990, c.30, as amended, of construction of the Project has not occurred on or before the date which is earlier of (a) two (2) years following the date of the commencement of construction or (b) the anticipated date of substantial performance of the Project identified in Schedule "A" attached hereto, the City may, immediately upon written notice to the Housing Provider terminate this Agreement.
10. If it has not already done so, the Housing Provider shall deliver to the City, if requested by the City from time to time, copies of all available construction, technical, engineering and design drawings, which concern the Project.

**Discretion**

11. Unless otherwise provided in this Agreement, the Parties shall act reasonably in exercising any discretion under this Agreement, or in providing or refusing any approval or consent concerning this Agreement.

**Laws of Province**

12. Any obligation in this Agreement is subject to the laws of the Province of Ontario and applicable by-laws of the City, and those laws and by-laws apply to the interpretation of this Agreement, and any reference to a statute or by-law in this Agreement includes any subsequent amendments or replacement and substitution of that statute or by-law.

**Schedules**

13. The Schedules to this Agreement are an integral part of this Agreement.

**Notice**

14. Any notice required under this Agreement must be in writing and delivered by personal service or ordinary mail to:

- (a) the City at the following address:

**68 Lindsay Street North  
P.O. Box 2600  
Lindsay, Ontario  
K9V 4R7**

**Attention: Director of Human Services**

- (b) the Housing Provider at the following address:

**68 Lindsay Street North  
P.O. Box 2600  
Lindsay, Ontario  
K9V 4R7**

**Attention: Chief Executive Officer**

The Housing Provider and City shall give notice to each other in writing of any change in this information. Any notice under this Agreement shall be deemed to be delivered on the date when personally served or, if mailed, on the third business day after the notice was mailed.

**Contact Persons**

15. The Housing Provider shall identify in writing one or more contact persons, who are authorized by the Housing Provider to respond on their behalf and who can

respond to requests from the City and receive and transmit information from the City and shall give notice to the City of any change in any contact person.

### **Assignment**

16. The Housing Provider shall not assign or transfer this Agreement or any of its responsibilities, rights or obligations under this Agreement without the prior written consent of the City, which may be withheld. A change of control of the Housing Provider shall for the purposes of this Agreement be deemed an assignment which shall require the prior written consent of the City.

### **Municipal Capital Facilities and Project Units**

17. The Parties acknowledge that the Project is a municipal housing project facility and, therefore, use of the Project shall be pursuant to section 110 of the *Municipal Act*, S.O. 2001, c.25, as amended and its regulations.

- 18.(1) The Housing Provider shall ensure that during the term of this Agreement:

- (a) all rental housing Project units (being those units more particularly described in Schedule "A") shall be Affordable Housing Units occupied by low and moderate income households;
- (b) all rental housing Project units shall be provided only to applicants on the Waiting List, subject to their ability to pay the affordable rent for the available housing unit;
- (c) under no circumstances shall a housing unit in the Project be made available when initially rented to an applicant for housing accommodation at a rental rate that is inconsistent with the definition of Affordable Housing Unit;
- (d) under no circumstances shall a housing unit in the Project be made available to applicants who own a residential property, as determined by the Housing Provider after making all reasonable inquiries; and

- (2) The Housing Provider shall ensure that all Project units are owned or occupied only in accordance with this Agreement and By-law \_\_\_\_\_ and, where applicable, the ***Residential Tenancies Act, 2006, S.O. 2006, c. 17***, as amended.

- 19.(1) All Project units shall be administered by the Housing Provider in accordance with this Agreement and the Affordable Housing Framework and all guidelines, directives, rules, orders and policies as may be issued from time to time by either the City. The Housing Provider shall verify household income of the initial applicant prior to renting or selling a Project unit to the applicant by completing and providing to the City, with respect to each initial applicant, a report in a form acceptable to the City verifying household income of the initial applicant. The Housing Provider shall further complete and provide to the City, on an annual basis on or before December 31st of each year, reports in form and content

acceptable to the City verifying any and all of the housing provider's annual occupancy data in respect of the Project. The form and content of the Housing Provider's report(s) may be modified by the City at any time and from time to time.

(2) The Housing Provider shall charge and increase rent only in accordance with the terms of this Agreement and as otherwise required by the guidelines, directives, rules, orders and policies as may be issued from time to time by the City.

20. This Agreement is binding on the Housing Provider's heirs, successors and assigns.

21.(1) The Housing Provider shall not:

- (a) save and except in respect of those units in the Project that are ownership units that were intended to be sold to purchasers who meet the eligibility criteria for the purposes of purchasing a unit, offer, list, advertise, or hold out for sale or lease or otherwise offer for disposal the Project or any part of the Project without the prior written consent of the City or otherwise in accordance with this Agreement;
- (b) save and except in respect of those units in the Project that are ownership units that were intended to be sold to purchasers who meet the eligibility criteria for the purposes of purchasing a unit, sell, lease or otherwise dispose of the Project or any part of the Project except with the prior written consent of the City or otherwise in accordance with this Agreement. In determining whether to grant its consent, the City may, in its discretion, consider any one of or a combination of the following factors, which include but are not limited to:
  - (i) as a condition precedent to a sale to a subsequent purchaser or lessor, the Housing Provider requires the subsequent purchaser or lessor to enter into an agreement with the City upon terms acceptable to the City, and that agreement shall impose, among other things, the terms of this Agreement on that subsequent purchaser;
  - (ii) the character, capabilities and affordability of the rents of the Project will not be diminished;
  - (iii) the City has approved in writing the agreement of purchase and sale or agreement to lease, as the case might be;
  - (iv) the sale will not decrease the number of units in the Project;
  - (v) the proceeds on the sale or disposition, if any, shall be distributed first against anything owed to the City and including any outstanding payments owed to the City pursuant to this Agreement;

- (vi) any default by the Housing Provider under the terms of this Agreement.
  - (3) Notwithstanding subsection (1) the Housing Provider may offer, list, advertise or hold out for lease individual units to tenants for a term of not greater than one (1) year; and
- 22.(1) If the Housing Provider does not carry out its obligations under this Agreement, the Housing Provider shall repay the entire amount of the benefits conveyed under the Agreement, as set out in Schedule "B" together with any applicable costs and interest (such interest charged at the rate charged under the Housing Provider's approved mortgage).
- (2) The Housing Provider will not sell, transfer, assign or convey the Project except with the prior written consent of the City. Notwithstanding the foregoing or anything else contained herein or elsewhere, if at any time during the Term of this Agreement, the Housing Provider intends to sell, transfer, dispose of or otherwise part with or allow possession of or alienate in any way the whole or any part of the Project and/or otherwise convey its interest in the Project (each being a "**Potential Sale**"), then the Housing Provider shall first give the City prior written notice of the terms and conditions of the Potential Sale and the purchaser shall, prior to the completion of the sale, enter into an agreement directly with the City on the City's form of agreement wherein it agrees to assume the obligations of the Housing Provider under this Agreement and observe and comply with the terms herein contained.

### **Housing Provider Status**

23.(1) The Housing Provider shall:

- (a) maintain itself in good standing as an active corporation and in accordance with all applicable laws;
  - (b) not amalgamate, alter, supersede or cancel its articles of incorporation or letters patent or any by-law without the prior written consent of the City; and
  - (c) comply with the City requirements for the Project including, but not limited to, any obligations under any lease associated with the Project and any guidelines, directives, rules, ordinances, orders and policies as may be issued from time to time by the City.
- (2) A breach by the Housing Provider of the terms and conditions of any applicable funding agreement, by-law or lease shall be deemed to be a default under this Agreement.

### **Registration On Title**

24. All relevant documents, including this Agreement, or notice thereof, shall be publicly registered in such fashion as may be requested or required by the City



and in this regard, this Agreement or notice thereof shall be registered against title to the Property.

### **Security**

- 25.(1) The parties acknowledge that the purpose of this Agreement is to facilitate the construction of the Affordable Housing Units and operation and availability throughout the Term, by the Housing Provider, of Affordable Housing Units for eligible low to moderate income households.
- (2) As a means to secure the purpose set out in subsection (1) and as security for the financial incentives set out in Schedule "B", the City requires satisfactory assurances and safeguards to ensure the construction and continued use of the Affordable Housing Units and, to that end, the Housing Provider agrees to execute and the City shall be entitled to register one or more mortgages against title to the Project in second position behind the first mortgage of the primary lender for the Housing Provider for a cumulative principal amount equal to the total amount of financial resources and relief, as set out in Schedule "B" ("principal amount"). The City may set the date upon which the mortgage(s) and related or accompanying security documents are to be signed by the Housing Provider and registered against title to the Property, which is contemplated to be the date upon which this Agreement is executed by the Housing Provider, but which may at the discretion of the City occur following execution of this Agreement by the Housing Provider.
- (3) No payments will be required under the mortgage(s) set out in subsection (2) so long as the Affordable Housing Units constructed by the Housing Provider are occupied by low to moderate income households throughout the Term.
- (4) Should all or any of the said housing units not remain as Affordable Housing Units occupied by low and moderate income households throughout the Term, the principal amount of the mortgage(s) shall immediately become due and payable.
- (5) At the expiry of the Term and provided the housing units have remained as Affordable Housing Units occupied by low and moderate income households, the principal amount of the mortgage(s) will be forgiven and the City shall execute a discharge of this mortgage upon presentation of same to the City by the Housing Provider.
- (6) The Housing Provider acknowledges that in addition to the mortgage(s) referred to in Section 27(2) above, the City shall be entitled, in its discretion, to require the Housing Provider to provide additional security upon the City's standard forms in the form of, but not limited to, a general assignment of rents against the Project and a general security agreement against such collateral determined by the City, including the current and after acquired personal property of the Housing Provider and the chattels of the Project.

- (7) The Housing Provider acknowledges and agrees that the security contemplated in this Section 27, may be combined in whole or part with the security contemplated by the Contribution Agreement and the Housing Provider covenants and agrees to execute and deliver such security in the form presented to it by the City.

#### **Amendment of Agreement**

26. This Agreement may only be amended on the mutual written agreement of the parties provided that such amendment shall be evidenced by a further written document.

#### **Invalidity of Provision of Agreement**

27. If any provision of this Agreement should be found by a court of competent jurisdiction to be illegal, invalid or unenforceable, such provision shall not apply and this Agreement shall remain in full force and effect without the provision.

#### **Submission of Documents**

28. The Housing Provider shall submit to the City any relevant documents, calculations, statements or information that the City may request from time to time, within the time period specified by the City.

#### **Statistics**

29. The Housing Provider shall, for statistical purposes, supply information as required by the City from time-to-time, provided such information is reasonably available to the Housing Provider, as determined by the City.

#### **Records**

30. The Housing Provider shall:
- (a) maintain financial records including, but not limited to, records related to rent collection and tenant income and eligibility verification, in a form satisfactory to the City;
  - (b) permit the City to inspect such records at all reasonable times; and
  - (c) retain all such records that relate to the Project for not less than seven (7) years from the end of the respective fiscal year.

#### **Taxes, Rates and Levies**

31. The Housing Provider shall pay, at its own expense all taxes, fees, levies or rates assessed and imposed by any municipal, provincial or federal government with respect to the Project and the activity carried out on the Project.

#### **Indemnification**

32. The Housing Provider shall indemnify and hold harmless the City, its officers, council members, partners, agents and employees from and against all actions, claims, demands, losses, costs, damages, suits or proceedings whatsoever which may be brought against or made upon the City and against all loss, liability, judgements, claims, suits, demands or expenses which the City may sustain or suffer resulting from or arising out of or in connection with this Agreement and/or the Housing Provider's participation in the Program and/or the failure to exercise reasonable care, skill or diligence or omissions in the performance or rendering of any work or service required hereunder to be performed or rendered by the Housing Provider, its agents, officials and employees.

### **Access**

33. The Housing Provider shall permit the City to have access to the Project at all reasonable times.

### **Payment of Mortgage**

34. The Housing Provider shall make all mortgage payments on the due dates and comply with all terms of its mortgages.

### **Mortgage**

35. Notwithstanding subsection (1) the City hereby consents to the registration of a first (1<sup>st</sup>) Charge/Mortgage against the Property in the principal amount of \$1,773,004.

### **Access to Information**

36. The Housing Provider shall provide the City with access to all information obtained by the Housing Provider under this Agreement, and shall immediately provide verification of such information if requested by the City.
37. The Parties acknowledge that, where applicable, this Agreement and its subject matter are subject to the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c.M.56, as amended.

### **Audit**

- 38.(1) The City may cause its employees or agents to conduct an audit, investigation or inquiry in relation to the Housing Provider and the Project, and the Housing Provider shall co-operate with the employees or agents of the City and provide full and free access to staff, projects, documents and records as determined by employees or agents of the City.

### **Dispute Resolution**

- 39.(1) The Housing Provider and the City agree that alternate dispute resolution processes such as mediation, appointment of a neutral third party evaluator or arbitration may be preferable to litigation as a way to resolve disputes that may arise under this Agreement and they agree to give good faith consideration to

having resort to an alternate dispute resolution process before initiating legal or other proceedings to deal with any such disputes.

- (2) The City and the Housing Provider agree that nothing contained in the subsection (1) shall affect or modify the rights and obligations of the City and the Housing Provider under the event of default and early termination provisions in of this Agreement.

### **Breaches**

40. In addition to other instances of non-compliance set out in this Agreement, the following actions by the Housing Provider shall be a breach of this Agreement:
- (a) the Housing Provider becomes bankrupt or insolvent or becomes subject to the provisions of the *Bankruptcy and Insolvency Act* R.S.C. 1985, c.B-3 or any other Act for the benefit of creditors, or goes into liquidation either voluntarily or under an order of a court of competent jurisdiction or make a general assignment for the benefit of its creditors or enters into an arrangement or compromise or otherwise acknowledges its insolvency;
  - (b) the Housing Provider has failed to comply with any of its obligations or is in default under this Agreement, including the Schedules attached hereto;
  - (c) the Housing Provider fails to cause all of the rental housing units of Project to remain occupied by eligible low to moderate income households throughout the Term; or
  - (d) the Housing Provider has failed to manage the Project adequately, as a prudent landlord and/or owner would, as determined by the City acting reasonably.

### **Remedies**

- 41.(1) In addition to other remedies set out in this Agreement, or otherwise available to the City at law or in equity and subject to subsection (3), if the Housing Provider is in breach of this Agreement the City may exercise any of the following remedies in any combination that the City chooses in its sole discretion, and the remedy may be exercised for such time as the City deems appropriate:
- (a) require the Housing Provider to provide additional information or documents to the City;
  - (b) reduce, suspend or discontinue any payment payable under this Agreement at the City's discretion;
  - (c) require the Housing Provider to pay to the City the entire amount of the benefits conveyed under the Agreement, as set out in Schedule "B", together with any applicable costs;

- (d) terminate this Agreement.

**Delay**

- (2) Waiver or delay in exercising a remedy shall not prevent the City from exercising the remedy at a later time for any breach of this Agreement.

**Limitations on Remedies**

- (3) Subject to subsection (4), the City shall give the Housing Provider written notice of any breach, specifying particulars, and if the Housing Provider does not remedy or commence remedying the breach to the City's satisfaction, in its sole discretion, within thirty (30) days from the date the notice is delivered and thereafter proceed diligently until such breach has been remedied, the City may exercise the remedies set out in subsection (1).

**Emergencies**

- (4) The City shall not be required to comply with subsection (3) if by doing so, in the City's sole judgement, would materially worsen the situation, would negatively affect the City's rights under this Agreement, or would cause irreversible damage to the City's interests.

- 42. Time shall be of the essence in this Agreement.

**The remainder of this page was intentionally left blank**

**In Witness WhereOf** the parties have caused this Agreement to be executed by their respective officers duly authorized in that behalf on the date below indicated.

**Signed, Sealed And Delivered**

**The Corporation Of The City Of  
Kawartha Lakes**

Date: \_\_\_\_\_

\_\_\_\_\_ per: Andy Letham, Mayor

Date: \_\_\_\_\_

\_\_\_\_\_ per: Cathie Ritchie, Clerk

We have the authority to bind the corporation

**The Corporation Of The City Of  
Kawartha Lakes**

Date: \_\_\_\_\_

\_\_\_\_\_ per: Kirstin Maxwell, CEO

I have the authority to bind the corporation

**Schedule “A”  
Description of the Project**

**1. Project Location (Municipal Address and Legal Description):**

The property is located at 25 Hamilton Street, Lindsay, Ontario.

**2. Project Unit Mix:**

The Housing Provider shall use the funding which is the subject of this agreement towards forty-six (46) units in this development.

**3. Affordable Rents:**

For the purposes of this Agreement, no less than 6 of the project units shall have rents that meet the definition of affordable housing as described in this agreement.

**Schedule "B"**  
**Financial Benefits Extended pursuant to the Agreement and the Municipal  
Housing Project Facilities By-law**

	Amount
<b>Total Capital Cost of Project</b>	<b>\$ 15,998,575</b>
Municipal Assistance - land	\$ 606,000
Municipal Assistance - forgiven fees	\$ 68,434
Municipal Assistance - exemption from DCs	\$ 629,120
OPHI	\$ 469,000
<b>Total Equity Provided</b>	<b>\$ 1,772,554</b>
<b>Proposed Loan/Debenture</b>	<b>\$ 9,446,328</b>