

SERVICE MANAGER ADMINISTRATION AGREEMENT

Investment in Affordable Housing for Ontario (2014 Extension)

This Agreement made the day of **[insert year]**.

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

AS REPRESENTED BY

THE MINISTER OF MUNICIPAL AFFAIRS AND HOUSING

(hereinafter called the "Minister")

- and -

[INSERT NAME OF SERVICE MANAGER]

(hereinafter called the "Service Manager")

RECITALS:

- A. Canada Mortgage and Housing Corporation ("CMHC") and Her Majesty the Queen in Right of Ontario, as represented by the Minister of Municipal Affairs and Housing ("the Minister"), entered into a bi-lateral agreement to provide for the Investment in Affordable Housing program from 2011-2014, effective April 1, 2011 (the "CMHC-Ontario Agreement for Investment in Affordable Housing 2011-2014").
- B. CMHC and the Minister entered into a Supplementary Agreement No. 1, dated August 11, 2014, ("the Supplementary Agreement").
- C. The Supplementary Agreement amends the CMHC-Ontario Agreement for Investment in Affordable Housing 2011-2014 by extending the funding available for Affordable Housing.
- D. The Minister has established a revised Rental Housing Component, a revised Homeownership Component, a revised Ontario Renovates Component and a new Operating Component (the "IAH (2014 Extension) Components"), pursuant to which the Minister will provide the CMHC funding and provincial funding for the Investment in Affordable Housing for Ontario (2014 Extension).
- E. The Minister and the Service Manager have entered into this Agreement for the purpose of establishing the Service Manager's obligations with respect to the administration of the IAH (2014 Extension) Components and the Minister's obligation to provide funding to the Service Manager for the administrative costs of participating in the IAH (2014 Extension) Components.

NOW THEREFORE, the Minister and the Service Manager agree with each other as follows:

1. INTERPRETATION

1.1 In this Agreement, unless the context requires otherwise, the following terms have the meanings set out in this Section:

- “**Administration Fee**” means the amount paid by the Minister to offset the Service Manager’s cost of performing tasks under this Agreement;
- “**Affordability Period**” means the period during which a Project is required to be affordable, as determined in accordance with the Program Guidelines or as otherwise established by the Minister;
- “**AIMS**” means the Affordable Housing Information Management System;
- “**Business Day**” means each Monday, Tuesday, Wednesday, Thursday and Friday except when any such day occurs on a statutory holiday observed in Ontario;
- “**CMHC**” has the meaning given to it in the recitals;
- “**CMHC-Ontario Agreement for Investment in Affordable Housing 2011-2014**” has the meaning given to it in the recitals;
- “**Funding**” means funding provided under a Program, as set out in the Program Guidelines;
- “**IAH (2014 Extension) Components**” has the meaning given to it in the recitals;
- “**Ministry Notification**” means a notice in writing from the Minister to a Service Manager regarding an IAH (2014 Extension) Component;
- “**Parties**” means the Minister and the Service Manager and “**Party**” means either of them, as the context may require;
- “**Program**” means any of the IAH (2014 Extension) Components;
- “**Program Delivery and Fiscal Plan**” means the plan developed by the Service Manager that sets out how the Service Manager will use the funding allocations, attached to this Agreement as Schedule F, which plan is also referred to as “**PDFP**”;
- “**Program Guidelines**” means the guidelines attached to this Agreement as Schedule H, as amended by the Minister from time to time;
- “**Project**” means affordable housing proposed or approved for a Program;

- **“Proponent”** means a person or other legal entity that has submitted a proposal;
- **“Year 1”** means the period from the date of this Agreement to March 31, 2015;
- **“Year 2”** means the period from April 1, 2015 to March 31, 2016;
- **“Year 3”** means the period from April 1, 2016 to March 31, 2017;
- **“Year 4”** means the period from April 1, 2017 to March 31, 2018;
- **“Year 5”** means the period from April 1, 2018 to March 31, 2019;
- **“Year 6”** means the period from April 1, 2019 to March 31, 2020.

1.2 The following Schedules are attached to and form part of this Agreement:

Schedule A - Rental Housing Component

Schedule B - Homeownership Component

Schedule C - Ontario Renovates Component

Schedule D - Operating Component

Schedule E - Communications Protocol Requirements

Schedule F - Program Delivery and Fiscal Plan

Schedule G - French Language Services Report

Schedule H - Annual Apprentice Report

Schedule I - Program Guidelines

1.3 In the event of a conflict or inconsistency between the provisions of this Agreement and the provisions of a Schedule, the provisions of this Agreement shall prevail.

1.4 All references in this Agreement to section numbers are references to sections of this Agreement unless stated otherwise.

2. COMPLIANCE WITH SCHEDULES

2.1 The Parties agree to comply with and abide by the terms and conditions set out in those Schedules to this Agreement relevant to the Programs in which the Service Manager participates. The Service Manager agrees to administer such Programs in accordance with those Schedules.

3. REPORTING REQUIREMENTS

- 3.1 The Service Manager agrees to comply with the reporting requirements set out in those Schedules relevant to the Programs in which the Service Manager participates.

4. USE OF FUNDING

- 4.1 The Minister shall make a notional allocation of Funding to each Service Manager. Each Service Manager's notional allocation shall be broken down by fiscal year. Funding shall be committed as set out in the Program Guidelines and cannot be relocated between fiscal years. The Minister may re-allocate Funding that has not been committed as set out in the Program Guidelines.
- 4.2 The Minister will advance Funding to Service Managers based on Project milestones, as set out in the Program Guidelines. For the Ontario Renovates Component the Minister will advance Funding only up to March 31, 2020. For the Rental Component, Homeownership Component, and Operating Component, the Minister will advance Funding only up to March 31, 2024. Funding will not be advanced by the Minister to Service Managers after the above dates.
- 4.3 All Funding shall be disbursed to Projects and recipients no later than four (4) years following the date of commitment.
- 4.4 Overall across the Province, Service Managers are required to meet the priority target groups, being seniors and persons with disabilities, as set out in the Program Guidelines. The Minister retains the right to reallocate Funds in Year 5 and Year 6 if these provincial targets are not met.
- 4.5 Service Managers are required to report to the Minister on the activities used to promote or support apprenticeships in Projects, the number of Projects employing apprentices, the number of apprentices employed through these Projects, and the type of trade in which the apprentices are training.
- 4.6 Funding shall not be used:
- in respect of housing for which there was on October 1, 2010, or is at the time of commitment under this agreement, an arrangement directly with CMHC relating to financing, operation or occupancy; nor
 - in respect of housing that was on October 1, 2010, or is at the time of commitment under this agreement, subject to any arrangements under any agreement between CMHC and the Government of Ontario.
- 4.7 Notwithstanding section 4.6, for the Ontario Renovates Component, Funding may be approved for a Unit where that Unit is already under an existing renovation program arrangement, provided that:
- (a) the Unit is not also subject to any other arrangement under section 4.6;

- (b) the Funding addresses a need or condition or work which has not been the subject of the previous renovation program assistance;
- (c) the provision of additional Funding has no impact on the existing renovation program arrangement; and
- (d) all other requirements of the Agreement are satisfied.

5. PROGRAM DELIVERY AND FISCAL PLAN

- 5.1 The Service Manager shall develop and submit to the Minister a Program Delivery and Fiscal Plan (“PDFP”), in accordance with the template attached as Schedule F.
- 5.2 The Program Delivery and Fiscal Plan shall be approved by the Municipal Council, District Social Services Administration Board, or delegated authority for the Service Manager.
- 5.3 The Program Delivery and Fiscal Plan shall contain the following information:
 - The IAH (2014 Extension) Components that the Service Manager will deliver in each year of the Program;
 - The number of units that are expected to be developed and/or the number of households that are expected to be assisted under the selected IAH (2014 Extension) Components in each year of the Program;
 - The amount of Funding from each year’s funding allocation that will be used for the selected IAH (2014 Extension) Components;
 - The amount of Funding projected to be committed to Projects or households quarterly under the selected IAH (2014 Extension) Components;
 - The client groups to be targeted under the selected IAH (2014 Extension) Components;
 - Agreement details under the Operating Component;
 - The amount of Funding from each year’s funding allocation that will be used for Administration Fees.
- 5.4 The Service Manager acknowledges that the Ministry will use the Program Delivery and Fiscal Plan to track the Service Manager’s progress against the Service Manager’s allocation of Funding.
- 5.5 Project proposals and/or household take-up for each year will be recommended by the Service Manager, based on the Program Delivery and Fiscal Plan.
- 5.6 Service Managers are required to update their Program Delivery and Fiscal Plans on a quarterly basis. Updates will include progress against their annual funding

allocation, quarterly projected take-up and planned commitments, and agreement and payment details under the Operating Component.

5.7 In the event a Service Manager's original planned commitment for Funding cannot be met, a Service Manager may move Funding within its notional allocation to other IAH (2014 Extension) Components within the same fiscal year in order to ensure that all funds are committed as set out in the Program Guidelines, as follows:

- (a) Funding originally planned for the Rental Housing, Homeownership and the Ontario Renovates Components can be re-allocated within these Components;
- (b) Funding originally planned for the Operating Component's Rent Supplement Stream and Housing Allowance Direct Delivery Stream can be re-allocated within these Streams;
- (c) If a Service Manager wishes to reallocate Funding from the Rental Housing, Homeownership, or Ontario Renovates Components to the Operating Component's Direct Delivery Streams, or vice versa, a request for reallocation shall be submitted to the Ministry prior to September 30 of the applicable year for which the reallocation is requested. The Ministry will attempt to accommodate such requests on a best efforts basis, but cannot guarantee approval of such requests.

6. MINISTER'S RIGHT TO WITHDRAW FUNDING

6.1 The Service Manager acknowledges that the Minister has the right to withdraw, demand repayment of and reallocate Funding in accordance with the Schedules.

7. ADMINISTRATION FEE

7.1 The Service Manager may use up to five per cent (5%) of its total funding allocation to assist with the administration of the IAH (2014 Extension).

7.2 In the event the Service Manager does not commit its total funding allocation, the Minister may request repayment of the portion of the Administration Fee paid to the Service Manager that exceeds five per cent (5%) of the committed Funding. The Service Manager shall repay amounts requested by the Minister within thirty (30) days of the date the Minister requests the repayment.

8. COMMUNICATIONS PROTOCOL

8.1 The Service Manager acknowledges that the terms of the CMHC-Ontario Agreement for Investment in Affordable Housing 2011-2014 require the Minister to co-ordinate with CMHC and/or obtain CMHC's approval with respect to publicity relating to projects funded in accordance with this Agreement, including advertising, written materials and signs; messages; public statements; press conferences; news releases; announcements; official ceremonies; and special events, in each case, for projects funded in accordance with this Agreement. The

Service Manager shall ensure that there will be no such publicity, advertising, signs, messages, public statements, press conferences, news releases, announcements, official ceremonies or special events, without the prior written consent of the Minister. A copy of the requirements of the CMHC-Ontario Agreement for Investment in Affordable Housing 2011-2014 is attached as Schedule E. All references to “2011-2014” or more generally to the 2011-2014 time period in the Communications Protocol forming part of the Original Agreement shall be read to apply to the 2014 Extension. The Service Manager agrees that it shall not do or omit to do any act which will cause the Minister to be in breach of these requirements.

9. FRENCH LANGUAGE SERVICES

9.1 The Service Manager agrees that where the Service Manager or a subcontractor providing a public service in connection with the IAH (2014 Extension) has an office located in or servicing an area designated in the Schedule to the *French Language Services Act* (“*FLSA*”), the Service Manager shall:

- (a) Ensure services are provided in French; and
- (b) Make it known to the public, by way of signs, notices, other information on services, and initiation of communications in French, that services provided to and communications with the public in connection with the IAH (2014 Extension) are available in French.

9.2 The Service Manager agrees to submit a written report to the Minister, in the form set out in Schedule G, by May 31 for each year of the IAH (2014 Extension), setting out whether the Service Manager or the subcontractor, as appropriate, have complied with Section 9.1.

9.3 Nothing in this section authorizes a Service Manager or provides it with the delegated authority to enter into any agreements on behalf of or otherwise binding the Province of Ontario.

10. APPRENTICESHIP

10.1 The Service Manager agrees to submit a written report to the Minister, in the form set out in Schedule H, by July 15 of each year, indicating the activities used to promote or support apprentices in Projects, the number of Projects employing apprentices and the number of apprentices employed in Projects.

11. NOTICE

11.1 Any notice or other communication required, desired or permitted to be given by this Agreement shall be in writing and shall be effectively given if:

- (a) delivered personally;
- (b) sent by prepaid courier service; or

(c) sent by facsimile communication, and confirmed by mailing the original documents so sent by prepaid mail on the same or following day, addressed as follows:

(i) in the case of notice to the Minister:

Ministry of Municipal Affairs and Housing
Attention: Director, Housing Programs Branch
777 Bay Street, 14th Floor
Toronto, ON
M5G 2E5

Fax: (416) 585-7003

(ii) in the case of notice to the Service Manager:

[insert relevant information]

or at such other address as the party to whom such notice or other communication is to be given shall have advised the party giving same in the manner provided in this section. Any notice or other communication delivered personally or by prepaid courier service shall be deemed to have been given and received on the day it is so delivered at such address, provided that if such day is not a Business Day such notice or other communication shall be deemed to have been given and received on the next following Business Day. Any notice or other communication transmitted by facsimile communication shall be deemed to have been given and received on the day of its transmission, provided that such day is a Business Day and such transmission is completed before 4:30 p.m. on such day, failing which such notice or other communication shall be deemed to have been given and received on the first (1st) Business Day after its transmission. If there has been a mail stoppage and if a party sends a notice or other communication by facsimile communication, such party shall be relieved from the obligation to mail the original document in accordance with this paragraph.

12. REMEDIES AND INDEMNIFICATION

12.1 The Service Manager shall indemnify the Minister for all costs, damages, expenses, injury and liability whatsoever which the Minister may suffer as a result of claims of any sort arising out of the implementation of this Agreement.

12.2 When the Service Manager becomes aware of a failure by a party who has received Funding to observe or perform a material condition relevant to the receipt of Funding, the Service Manager shall notify the Minister. The Minister and the Service Manager shall each appoint one person to an ad hoc committee for the purpose of assembling information relating to the failure and determining a course of action for rectifying the failure. Terms of reference for the ad hoc committee shall be developed and agreed to by the Minister and the Service Manager.

- 12.3 Where applicable, in determining what course of action may be undertaken to remedy the failure, the Parties shall use its best efforts to work together co-operatively with a view to maintaining, to the greatest extent possible in the circumstances, the affordability of the rents for the Project, as determined by the Contribution Agreement. The Parties acknowledge that the interests of the tenants shall be considered in determining what course of action may be most suitable to remedy the failure.
- 12.4 The obligation to indemnify or the distribution of a recovery of Funding as a result of a failure will require the Service Manager and/or the party in receipt of Funding to exhaust all reasonable opportunities to seek recovery, which efforts shall include, but shall not be limited to, resorting to legal action to defend third party claims, seeking indemnification from insurance policies, if any, that may afford coverage for a particular loss and/or recovering Funding from bonding companies or other third parties who, at law, may be responsible for the losses as a result of a failure.
- 12.5 Where there is a direct relationship between the Minister and a party in receipt of Funding, the party in receipt of Funding shall indemnify the Minister for all Funding paid in the event of a claim against the Minister. Indemnification of the Minister will be required throughout the Affordability Period.
- 12.6 In situations of non-compliance due to misuse or negligence, the party in receipt of Funding shall repay the Minister all Funding. If a project ceases to operate as an IAH (2014 Extension) Project, the Proponent shall repay the Minister all Funding, subject to the discretion of the Minister to reduce the amount to be repaid at the rate specified in the Program Guidelines, provided that the party in receipt of Funding has fulfilled all the requirements of the Program.
- 12.7 All of the remedies in this Agreement and any security in respect of the Funding are cumulative and are not alternative and the Minister shall not be precluded from availing himself simultaneously of some or all of the said remedies and any other remedies available in equity or at law.
- 12.8 Notwithstanding any of the terms of this Agreement or of any security in respect of the Funding, the Minister shall have the option of waiving any or all of his remedies under this Agreement and the security, but no waiver of a provision shall be deemed to constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver unless otherwise provided.

13. GENERAL

- 13.1 The Service Manager shall submit information in the manner required by the Minister and shall comply with all Ministry Notifications.
- 13.2 The Service Manager shall maintain all records and documentation pertaining to each Program in which it participates and each Project funded by it under a Program for seven (7) years following the life of that Program.

- 13.3 The Service Manager shall, on forty-eight (48) hours prior written notice, give the Minister, his or her representatives and/or auditors free access to such staff, documents, books, records and accounts as may be determined by the Minister, his or her representatives and/or auditors, for the purpose of verifying compliance with the Programs and this Agreement. The Service Manager shall ensure that the same obligation is imposed on any subcontractor engaged to assist the Service Manager in the performance of this Agreement. The Service Manager acknowledges that the Ministry may conduct a random audit of a sampling of Service Managers and its subcontractors in any year. No provision of the Agreement shall be construed so as to give the Minister any control whatsoever over the Service Manager's records. For greater certainty, the Minister's rights under this section are in addition to any rights provided to the Auditor General pursuant to section 9 (1) of the *Auditor General Act* (Ontario). This section shall survive any expiry or termination of this Agreement.
- 13.4 The Service Manager represents that it has not knowingly provided the Minister with any false or misleading information respecting the subject matter of this Agreement and agrees that it shall not knowingly provide any false or misleading information to the Minister in the performance of its obligations under this Agreement.
- 13.5 Any power, right or function of the Minister, contemplated by this Agreement, may be exercised by any employee or agent of the Ministry of Municipal Affairs and Housing.
- 13.6 It is understood that the *Freedom of Information and Protection of Privacy Act* shall apply to all records submitted to or created by the Minister pursuant to this Agreement.
- 13.7 The Service Manager represents and warrants that it shall comply with all relevant legislation respecting freedom of information and protection of privacy, including, but not limited to the *Freedom of Information and Protection of Privacy Act*, the *Municipal Freedom of Information and Protection of Privacy Act*, and the *Personal Information Protection and Electronic Documents Act*.
- 13.8 Each disbursement of Funding by the Minister to the Service Manager under this Agreement is subject to the necessary appropriations from the Federal Parliament and the Provincial Legislature. Neither the Minister nor CMHC shall have any liability in the event the respective appropriations are insufficient to meet the funding obligations of the Minister.
- 13.9 Nothing in this Agreement is to be construed as authorizing one Party to contract for or incur any obligation on behalf of the other or to act as agent for the other and nothing in this Agreement shall be construed to constitute the Minister and the Service Manager as partners of each other.
- 13.10 The Service Manager acknowledges that CMHC is not a party to this Agreement.
- 13.11 No member of:

- (a) the House of Commons or Senate of Canada; or
- (b) the Legislative Assembly of Ontario; or
- (c) the Municipal Council or District Social Services Administration Board constituting the Service Manager herein or the Municipal Council of any local municipality of such Service Manager or the governing body of any Municipal Agency, Board or Commission of any of such municipalities;

shall be admitted to any share or part of any contract, agreement or commission made pursuant to this Agreement or to any benefit arising therefrom, including, without limitation, any contract, agreement or commission arising from or related to the IAH (2014 Extension) Components.

- 13.12 All of the remedies available to the Minister under this Agreement, at equity and/or at law are cumulative and are not alternative and the Minister shall not be precluded from availing himself simultaneously of some or all of the said remedies.
- 13.13 Notwithstanding any of the terms of this Agreement, the Minister shall have the option of waiving any or all of his remedies under this Agreement, but no waiver of a provision shall be deemed to constitute a waiver of any other provision (whether or not similar) nor shall any waiver constitute a continuing waiver unless otherwise provided.
- 13.14 Time shall in all respects be of the essence in this Agreement, provided that the time for doing or completing any matter provided for under this Agreement may be extended or abridged by agreement in writing signed by the Minister and the Service Manager or its respective solicitors on its behalf, who are hereby expressly appointed in this regard.
- 13.15 This Agreement is made pursuant to and shall be governed by and construed in accordance with the laws of the Province of Ontario.
- 13.16 Any reference to a statute in this Agreement includes a reference to all regulations made pursuant to such statute, all amendments made to such statute and regulations in force from time to time and to any statute or regulation which may be passed and which has the effect of supplementing or superseding such statute or regulations.
- 13.17 The headings and subheadings contained in this Agreement are inserted for convenience and for reference only and in no way define, limit or describe the scope or intent of this Agreement or form part of this Agreement.
- 13.18 The parties agree that there are no representations, warranties, covenants, agreements, collateral agreements or conditions affecting this Agreement other than as expressed in writing in this Agreement.
- 13.19 This Agreement shall be read with all changes of gender and number required by the context.

- 13.20 Each of the Parties shall, at any time and from time to time, upon not less than twenty (20) Business Days prior written notice by the other Party, execute and deliver to the other Party a statement in writing confirming that this Agreement is in good standing, unmodified and in full force and effect, or if there have been modifications that the same are in good standing and in full force and effect, as modified, and stating the modifications. Where applicable, the statement shall state the defaults, if any, known to the Party to whom such request has been made and the action taken or proposed to be taken by such requested Party with respect to same.
- 13.21 If the Service Manager owes any money to the Minister, whether or not its return or repayment has been demanded by the Minister, such monies shall be deemed to be a debt due and owing to the Minister by the Service Manager and the Service Manager shall pay or return the amount to the Minister unless the Minister otherwise directs. The Minister may charge the Service Manager interest on any monies owing by the Service Manager at the then current interest rate charged by the Province of Ontario on accounts receivable.
- 13.22 The Minister may set off any debt owing by the Service Manager to the Minister under this Agreement against any amount payable by the Minister to the Service Manager.
- 13.23 The Service Manager shall not assign this Agreement without the prior written consent of the Minister, which consent may be withheld, acting in his sole discretion.
- 13.24 This Agreement shall enure to the benefit of and be binding upon the Parties hereto and its respective successors and assigns, provided that this paragraph shall in no way derogate from the provisions of section 13.23 restricting the Service Manager's ability to assign this Agreement.
- 13.25 The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement. Any invalid or unenforceable provision shall be deemed to be severed.

IN WITNESS THEREOF this Agreement has been executed by the Parties.

**HER MAJESTY THE QUEEN IN RIGHT
OF ONTARIO AS REPRESENTED BY
THE MINISTER OF MUNICIPAL
AFFAIRS AND HOUSING**

Janet Hope
Assistant Deputy Minister

Date:

[Insert name of SERVICE MANAGER]

Per: _____
Name:
Title:
Date: c/s

Per: _____
Name:
Title:
Date: c/s

I/We have the authority to bind the Service
Manager