

Bill No. 36
2023

By-Law No. A.- _____ - _____

A by-law to authorize and approve the Rapid Housing Initiative Agreement between the Canadian Mortgage and Housing Corporation and The Corporation of the City of London and to delegate the authority to the Deputy City Manager, Planning and Economic Development to approve further schedules and amending agreements and to execute any documents, attestations or reports required pursuant to the Agreement.

WHEREAS section 10 of the *Municipal Act, 2001* provides that the City may provide any service or thing that the City considers necessary or desirable for the public, and may pass by-laws respecting same, and respecting economic, social and environmental wellbeing of the City including respecting climate change, and the health, safety and well-being of persons;

AND WHEREAS section 9 of the *Municipal Act, 2001* provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act;

AND WHEREAS City is responsible for the delivery and administration of affordable housing initiatives;

AND WHEREAS subsection 5(3) of the *Municipal Act, 2001* provides that a municipal power shall be exercised by by-law;

NOW THEREFORE the Municipal Council of The Corporation of the City of London enacts:

1. The Rapid Housing Initiative Agreement between the Canada Mortgage Housing Corporation and The Corporation of the City of London (the "Agreement"), substantially in the form attached as Schedule 1 to this bylaw, is hereby authorized and approved.
2. The Mayor and Clerk are authorized to execute the Agreement approved under section 1 of this bylaw.
3. The Deputy City Manager, Planning and Economic Development is authorized to approve further schedules, amendments or amending agreements to the Agreement.
4. The Mayor and Clerk are authorized to execute any schedules or amending agreements to the Agreement approved by the Deputy City Manager, Planning and Economic Development pursuant to their authority under section 3 of this bylaw.
5. The Deputy City Manager, Planning and Economic Development is authorized to execute any documents, attestations, or reports required under the Agreement, any future amending agreements or schedules.

6. Civic Administration is delegated the authority to take all administrative actions required in connection with the Agreement, any future amending agreements or schedules.

7. This by-law shall come into force and effect on the day it is passed.

PASSED in Open Council on January 24, 2023.

Josh Morgan
Mayor

Michael Schulthess
City Clerk

First reading – January 24, 2023
Second reading – January 24, 2023
Third reading – January 24, 2023

RAPID HOUSING INITIATIVE AGREEMENT

THIS AGREEMENT is made as of the ___ day of _____, 202__ (the "Effective Date") between **CANADA MORTGAGE AND HOUSING CORPORATION ("CMHC")** and **[NAME OF REGIONAL/MUNICIPAL GOVERNMENT]** ("Recipient").

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

WHEREAS additional affordable housing units are urgently needed for those experiencing, or at risk of, homelessness;

WHEREAS the continued purpose of the Rapid Housing Initiative ("RHI") is to rapidly house some of the most vulnerable Canadians; and

WHEREAS in connection with the RHI, CMHC is authorized under the National Housing Act to make contributions to the Recipient for the purposes of developing, in conformity with the deliverables to be approved by CMHC and attached as **Schedule B** (the "Deliverables"), at least **[number of units]** affordable housing units in the **[Municipality / Region]** (the "Units");

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

1. Contribution and Purposes

The contribution by CMHC under this Agreement is \$**[●]** (the "Contribution") and will be advanced to the Recipient following signature of this Agreement, subject to the terms and conditions herein and for only to be used for the following purposes (as will be further specified by the Recipient in the Deliverables):

- (i) acquisition of land and the construction of affordable multi-residential housing;
- (ii) acquisition of land and buildings for the purpose of conversion of non-residential into affordable multi-residential housing Units; or
- (iii) acquisition of land and buildings In Disrepair or abandoned for the rehabilitation¹ into affordable multi-residential housing Units;

and all of the eligible costs associated with the foregoing including conversion costs, pre-development, 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.

For greater certainty, costs must be incurred on or after December 1, 2022 and do not include operational expenses. Furthermore, the Recipient is solely responsible for any cost overruns due to change in scope, design, time to complete, site conditions or otherwise and CMHC will not increase the Contribution in any circumstances.

2. Expiration of Commitment

If this Agreement is not executed by the Recipient by **[insert date that is 10 business days from date agreement is sent to Recipient]**, or such other date as CMHC may agree to in writing, then CMHC's obligation to make the Contribution shall end at CMHC's sole discretion.

¹ The buildings to be rehabilitated must have been in disrepair and/or abandoned and in both cases uninhabitable and lost to the housing stock.

3. Conditions to Funding

The Recipient agrees it will:

- (a) perform all of its obligations under Schedule B 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 (as defined in **Schedule A**) who are targeted by the Affordability Criteria (as defined in **Schedule A**);
- (b) submit no later than March 15, 2023, for CMHC's review and approval, the project(s) details through the CMHC application portal, which is located at [URL]. Once approved by CMHC, CMHC will issue Schedule B, which will be incorporated into this Agreement by reference;
- (c) ensure, 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 CMHC 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;
- (d) ensure 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 its jurisdiction during the Term;
- (e) ensure 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;
- (f) where it intends to engage a third party intermediary (the "**Intermediary**") to construct, operate, and/or own the Units: (i) exercise appropriate care in selecting an Intermediary who is a reputable entity that meets the Recipient's integrity regime and Know-Your-Client requirements; (ii) enter with the Intermediary into agreements as may be needed, setting out terms and conditions reflecting the requirements of this Agreement; and (iii) take all necessary actions to cause the Intermediary to comply with the obligations under this Agreement, noting however that the Recipient shall remain at all times primarily liable to CMHC for the fulfillment of all obligations under this Agreement;
- (g) 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; and
- (h) provide such financial and other information or documents relating to the Recipient as CMHC may reasonably require.

4. Return of Contribution

In support of the implementation of the RHI to rapidly house some of the most vulnerable Canadians, the Recipient will select projects that can be implemented within the short period of time specified in the Deliverables. As a consequence, the Recipient agrees to the following:

- (a) CMHC may periodically review the progress in fulfilling the Deliverables. Where CMHC or the Recipient considers 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 a project within 2 months of the start date(s) set out in Schedule B, the Parties shall consult together and make all efforts to find an acceptable solution that minimizes impacts on the projects and that is in the best interest of the RHI implementation, following which CMHC may reduce or cancel the Contribution to the extent that CMHC considers reasonable. In that case, the Recipient shall

return any such reduced or cancelled Contribution within 30 days of being notified in writing by CMHC. For the purpose of this section, a project is started when the Recipient first incurs Hard Costs.

(b) The Recipient shall return to CMHC any unused Contribution (including any interest earned by the Recipient in respect thereof) within 30 days 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 *[insert appropriate date: January 30, 2025 or July 30, 2025 for projects located in the North]*, –unless otherwise agreed to by CMHC. Unused Contribution funding (including any interest earned by the Recipient in respect thereof) cannot be used to cover cost increases, cost overruns and/or change orders relating to projects funded under RHI 1 and/or RHI 2.

5. Disposition, Conversion, and Encumbrance of Units

(a) Except where there is a Disposition to an Intermediary, 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 CMHC, who may impose any conditions it deems necessary and appropriate, acting reasonably.

(b) The Recipient may not encumber the Units, or any lands acquired with the Contribution, without CMHC's prior written consent, acting reasonably.

6. Reporting

The Recipient agrees it will:

(a) deliver an attestation to CMHC 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 CMHC, and in accordance with the quarterly attestation form found on the CMHC application portal located at [URL] (the “**Quarterly Attestation**”), which is hereby expressly incorporated into this Agreement by reference and CMHC 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 CMHC 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 CMHC, until the completion of the Term and in accordance with the yearly attestation form on the CMHC application portal located at [URL] (the “**Yearly Attestation**”), which is hereby expressly incorporated into this Agreement by reference and CMHC 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 Deliverables (**Schedule B**) and the Additional Terms (**Schedule D**), form a part of this Agreement.

[Signature pages follow]

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

CANADA MORTGAGE AND HOUSING CORPORATION

700 Montreal Rd
Ottawa, Ontario
K1A 0P7

Name:
Title:

[RECIPIENT]

[Address]

Name:
Title:

Name:
Title:

*[Signature page for the Rapid Housing Initiative Agreement
between Canada Mortgage and Housing Corporation and **[Recipient]**]*

SCHEDULE A

Definitions

"Affordability Criteria" means:

All units must serve and be affordable (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) to targeted People and Populations Who Are Vulnerable and 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. CMHC 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 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.

A Recipient who has already adopted its own definitions for 'severe core housing need', 'homelessness' or at 'risk of homelessness' may, with approval of CMHC, apply such definitions to the Affordability Criteria. Otherwise, the definitions for these terms indicated herein apply.

"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.

"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.

"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 relevant jurisdiction 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).

“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, all as more particularly set out in the project budget (and, for the avoidance of doubt, Hard Costs shall not include amounts payable pursuant to the terms of any consultant contract).

“In Disrepair” means Units which are abandoned and/or in disrepair and no longer adequate for occupancy would be eligible for acquisition and rehabilitation if, in the opinion of a qualified expert, they cannot be made safe and adequate for occupancy without undertaking a substantial or complete renovation of the entire existing building(s) including dwelling units.

"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.

SCHEDULE B

Deliverables

[see attached]

SCHEDULE C
Additional Terms

Parties agree to the following additional terms and conditions:

1. Termination

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, CMHC may immediately terminate this Agreement and declare the Contribution to be repayable to CMHC in whole or in part, and may exercise any other rights and remedies it has by operation of law or equity. Sections 2, 3 and 4 of this **Schedule D** shall survive the expiry or termination of this Agreement.

2. Indemnification

The Recipient agrees to indemnify and save harmless the Government of Canada, CMHC, its officers, directors 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 CMHC is named as a party.

3. Liability

CMHC shall not be liable to the Recipient or any other party in relation to the Contribution. To the extent the Recipient engages or retains any third party in respect of its obligations under this Agreement, the Recipient shall remain primarily liable to CMHC for the fulfillment of its obligations under this Agreement. For the purposes of this Agreement, CMHC will only deal with the Recipient, and not with third parties retained by the Recipient including the Intermediary.

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 in compliance with all applicable laws, including all environmental laws and municipal zoning, in all material respects.

(c) 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

In areas of significant demand, the Recipient agrees to provide all information and services pertaining to the RHI in both French and English. The Recipient will use the criteria for communications and services in the *Official Languages Regulations* made pursuant to Canada's *Official Languages Act* as a guideline to determine "significant demand". The Recipient will consult with representatives of local minority language groups.

6. Information and Communications

(a) 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, 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.

(b) The Recipient consents to the collection, use and disclosure of information submitted to CMHC by the Recipient for the following purposes: (i) to assess the Recipient's eligibility under the RHI; (ii) for analytics, policy analysis, auditing and research by CMHC; (iii) to communicate to the Recipient possible opportunities under other CMHC programs, or possible collaboration opportunities with third parties; (iv) for evaluation of the RHI; (v) for use by CMHC 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 CMHC 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.

(c) CMHC and its representatives are authorized to use and disclose the information, on a need to know basis, to CMHC employees, officers and directors, the office of the Minister responsible for CMHC and provincial/territorial/municipal entities collaborating with CMHC for the purposes outlined in Section 6(b) of this **Schedule D**.

(d) Any public communications related to projects under this Agreement must be approved in advance by CMHC. Notwithstanding the preceding, each Party retains the right to communicate information to Canadians about the projects to meet its respective legislated and regulatory obligations, with prior notice to the other Party.

(e) If requested by CMHC, the Recipient shall publicly acknowledge CMHC's and the Government of Canada's Contribution under this Agreement in a manner acceptable to CMHC, acting reasonably, including through use of signage at the project (at the costs of CMHC).

7. Audit

(a) CMHC and any of its 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) CMHC 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 CMHC's 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 CMHC is solely a financial contributor in respect of the Units and there shall be no legal partnership or joint venture between CMHC and the Recipient or the Intermediary. 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 avoid any conflict of interest during the Term of this Agreement and shall immediately declare any existing, potential or apparent conflict and shall, upon direction of CMHC, take steps to eliminate any conflict, or perception that a conflict of interest exists.

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. This Agreement may not be assigned by a Party without the prior written consent of the other Party. Any amendment to this Agreement must be approved by both Parties in writing.

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 CMHC 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 CMHC. Any such waiver shall not be deemed a waiver for a subsequent breach of the same or any other provision of this Agreement.

16. Governing Law and Jurisdiction

This Agreement will be governed by and construed in accordance with the laws of the province or territory where the Units are situated, and indigenous laws 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 appropriations by the Parliament of Canada.

17. 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.

18. Additional Funding

Notwithstanding Section 17 of this **Schedule C**, if following the Effective Date, the Recipient receives additional RHI funds that are separate and in addition to what is set out in Section 1 of this Agreement (the "**Additional Funds**"), CMHC may use this Agreement as a basis for its agreement with the Recipient in relation to the Additional Funds. If the Recipient accepts such Additional Funds, and unless directed otherwise by CMHC, the Recipient shall deliver a revised Schedule B in respect of the Additional Funds (including the additional contribution, units and applicable term) within 30 days of receiving notice of the Additional Funds, for CMHC's review and approval at its sole discretion. The terms and conditions of this Agreement, as varied by the revised Schedule B, shall apply to the Additional Funds mutatis mutandis unless otherwise agreed by the Parties.