

MUNICIPAL CAPITAL FACILITIES AGREEMENT

dated the ___ day of _____, 2025.

BETWEEN:

CITY OF OTTAWA (the “City”)

-and-

** (the “Housing Provider”)

WHEREAS:

- A. The Housing Provider is the **owner/tenant** of the lands municipally known as **(address)**, Ottawa and legally described in Annex “A” hereto (the “Lands”);
- B. By way of a **contribution agreement OR rent supplement agreement** dated as of **(date)** between the City and the Housing Provider, the Housing Provider administers and operates affordable housing on the Lands (**“Contribution Agreement” OR “Rent Supplement Agreement”**);
- C. On July 10, 2024, City Council enacted By-law 2024-320 to provide for municipal housing facilities;
- D. The Housing Provider wishes, pursuant to Section 110 of the Municipal Act, 2001, to enter into an Agreement with the City for use of the affordable housing units within the Lands as municipal housing project facilities;
- E. On **(date)** City Council enacted By-law No. **2025-___** which designated the affordable units within the Lands as a municipal housing project facility (“MHPF”) and exempted the Lands from taxation for municipal and school purposes;
- F. Further to the designation and exemption by Council, the City wishes, pursuant to Section 110 of the Municipal Act, 2001, to enter into an agreement to confirm the terms and conditions of the designation and exemption for the use of the Lands as a MHPF and to exempt the Lands, or portion thereof, from taxation for municipal and school purposes effective **(date)**;
- G. The Lands will be used for the provision of MHPF, which is an eligible class of municipal capital facilities described in section 2(1) 18. of the Ontario Regulation 603/06, as amended;

THEREFORE, in consideration of the making of this Agreement and the mutual covenants contained herein, the parties undertake, covenant and agree as follows:

MUNICIPAL HOUSING PROJECT FACILITY

- 1. The parties agree that the Lands or portion thereof that meet the requirements set out in By-law No. 2024-320 and designated in By-law 2025 - ___ are as follows (the “Designated Lands”)

Roll #	Address	Unit Count

MCFA – **(address)**

DESIGNATION

2. The City has by by-law (attached as Annex “B”) pursuant to subsection 110(1) of the *Municipal Act, 2001*, designated the Designated Lands as a municipal housing project facility for affordable housing.

TAX EXEMPTION

3. The City has by by-law (attached as Annex “B”), pursuant to subsection 110(6) of the *Municipal Act, 2001*, exempted the Designated Lands from property taxation for municipal and school purposes.

TERM

4. The term of this Agreement, the designation of the Designated Lands as a MHPF and the exemption from taxation for municipal and school purposes shall be from (date) (the “**Commencement Date**”) to the earliest of:
 - a. Twenty years following the Commencement Date;
 - b. the day the Housing Provider ceases to use the Designated Lands as a MHPF as defined in section 110 of the *Municipal Act, 2001* and Ontario Regulation 603/06 as amended;
 - c. the day the Housing Provider ceases to use the Designated Lands for affordable housing and in compliance with the provisions respecting municipal housing project facilities agreements in City of Ottawa By-law No. 2024-320, as amended;
 - d. the day the Housing Provider ceases to occupy the Designated Lands without having assigned the Agreement to a person approved by the City in accordance with this Agreement and the requirements of By-law No. 2024-320, as amended;
 - e. The date the lease between XX, as tenant and XX, as Landlord is terminated; and/or
 - f. this Agreement or the Contribution Agreement OR Rent Supplement Agreement being terminated for any reason.

REPRESENTATIONS AND WARRANTIES

5. The Housing Provider represents and warrants that:
 - a. It was determined ineligible by the Municipal Property Assessment Corporation (MPAC) or the City of Ottawa for a property tax exemption under Section 3 of the Assessment Act, 1990.
 - b. the lands are owned and/or operated by the Housing Provider which is a registered non-profit or co-operative organization organized.
 - c. each unit in the MHPF is:

- i. rented at a monthly occupancy cost at or below the Average Market Rent (AMR), by unit type for any calendar year, as determined in the annual survey of City-wide rents for the prior calendar year published by the Canada Mortgage and Housing Corporation (CMHC). If the Canada Mortgage and Housing Corporation does not publish an annual survey of City-wide AMR for the prior calendar year, the City-wide AMR for the calendar year is within the amount determined by the Director of Housing Solutions and Investment Services and those affordable housing units are continuously occupied (with the exception of vacancies for brief periods to accommodate a change in tenancy);
 - ii. constructed pursuant to an affordable housing capital contribution agreement with the City since 2001 for the delivery and/or operation of the affordable housing unit **or** has a rent supplement agreement with the City in good standing for the affordable housing unit; and
 - iii. Houses individuals from the City's Centralized Waiting List (CWL), Below-Market Rent (BMR) waitlist, or other similar approved wait lists at initial occupancy and upon turnover.
- g. It has notified the tenant of each unit in the MHPF that the unit is exempt from property taxes for municipal and school purposes.

CONDITIONS

- 6. Each unit in the MHPF shall continuously meet the definition of affordable housing, as set out in By-law No. 2024-320, as amended.
- 7. Each unit in the MHPF shall be made available only to individuals and families on the waiting list in accordance with the **Contribution Agreement, subject to their ability to pay the affordable rent for the available unit OR Rent Supplement Agreement.**,
- 8. Subject to **Section 9 below**, no unit in the MHPF shall be rented or sold by the Housing Provider to shareholders or directors of the Housing Provider, or any individual not at arm's length to the Housing Provider or shareholders or directors of the Housing Provider;
- 9. Despite **Section 8** above, units subject to this Agreement may be rented to directors of the Housing Provider or individual not at arm's length to directors of the Housing Provider if:
 - a. the Housing Provider is a non-profit housing co-operative as defined in the Co-operative Corporations Act, R.S.O. 1990, c.C.35, as amended or a not-for-profit corporation;
 - b. the director in question is not involved in a non-arm's length relationship with the Housing Provider, except as his or her position as director; and

- c. the individual not at arm's length to a director is not involved in a non-arm's length relationship with the Housing Provider, except for his or her relationship with that director.
10. Savings from property taxes, generated through the property tax exemption shall be directed towards **capital repairs, the development of new affordable housing units, or to improve affordability of units in the development** and such savings/works must be reported annually to the City.

BENEFITS BEING CONVEYED

11. The benefits being conveyed to the Housing Provider under this by- law, including their monetary value, is the equivalent to the property tax savings.
12. The City is satisfied that the monetary value of benefits being conveyed to the Housing Provider is reasonably offset by the capitalized value of affordable housing services being conveyed to the City.
13. If the Housing Provider does not carry out its obligations under this Agreement, the Housing Provider shall pay to the City up to the full amount of the benefits conveyed under this Agreement, together with any applicable costs and interest.

DEFAULT AND TERMINATION

14. The Housing Provider is in default of this Agreement where it fails to comply with any of its obligations or requirements established in this Agreement.
15. Where the Housing Provider is in default of this Agreement, the City shall, where practical, provide written notice of the default to the Housing Provider. The Housing Provider shall have thirty (30) days, or such lesser amount of time as is reasonable in the circumstances, to remedy (or to commence to undertake such actions as are necessary to remedy such default provided such actions are being diligently pursued by the Housing Provider) the default to the satisfaction of the City within the time period prescribed herein. Where the default is not remedied to the satisfaction of the City, the City may exercise any remedy available at law and pursuant to this Agreement. Without limiting the generality of the foregoing, the City may:
 - a. cancel any tax exemption;
 - b. audit the information provided by the Housing Provider to the City and any other information deemed relevant by the City to investigate the default and the Housing Provider hereby agrees to provide all requested information in a timely fashion and to pay all costs of the audit;
 - c. require that the Housing Provider to **repay all or any part of the tax exemption already provided to the** Housing Provider, **plus interest**; and/or
 - d. terminate this Agreement.

DEBT DUE

16. If the Housing Provider owes money to the City pursuant to this Agreement, such amount shall be a debt due to the City and the City may charge the Housing Provider interest on any money owing at the then current interest rate charged by the City of the Province of Ontario, whichever is highest, on accounts receivable.
17. If the Housing Provider fails to repay any amount owing to the City under this Agreement, the City may deduct any unpaid amount from any money payable to the Housing Provider by the City.

NOTICES

18. Any notice or reporting required to be given by either party to the other shall be given in writing and delivered in person or by prepaid first class mail to:

in the case of the City to:

**

City of Ottawa

110 Laurier Avenue West, 5th floor Ottawa, ON

K1P 1J1

Telephone: **

Email:

in the case of the Housing Provider to:

**

Telephone: **

Email:

COMPLIANCE WITH LEGISLATION

19. The Housing Provider acknowledges and agrees to comply with applicable legislation including the *Ontario Human Rights Code*, the *Workplace Safety and Insurance Act*, the *Occupational Health and Safety Act*, the *Accessibility for Ontarians with Disabilities Act, 2005*, the *Personal Information Protection and Electronic Documents Act*, and *Municipal Freedom of Information and Protection of Privacy Act*, as applicable.

20. The Housing Provider acknowledges that the City is bound by the *Municipal Freedom of Information and Privacy Act* and that any information provided to the City in connection with the MHPF or otherwise in connection with the Agreement may be subject to disclosure in accordance with that Act.

ZONING AND PERMITTED USES

21. For the purposes of clarity, the City acknowledges and agrees that neither this Agreement nor the by-law shall in any way affect the zoning of the Lands or the permitted uses of the Lands under applicable laws.

OBLIGATIONS AS COVENANTS

22. Each obligation expressed in this Agreement, even though not expressed as a covenant, is considered to be a covenant for all purposes.

INSURANCE

23. During the Term of this Agreement, the Housing Provider shall maintain appropriate insurance, as required under the **Contribution Agreement or Rent Supplement Agreement**.

INDEMNITY

24. The Housing Provider shall indemnify, save, defend and keep harmless from time to time and at all times, the City and its officers, employees, councillors, and agents from and against all claims, actions, causes of action, interest, demands, costs, charges, damages, expenses and loss made by any person arising directly or indirectly from:

- a. the City entering into this Agreement;
- b. any failure by the Housing Provider to fulfil its obligations under this Agreement; and
- c. any failure by the Housing Provider to comply with Section 36 of this Agreement (Assignment)

ANNUAL REPORTING

25. On an annual basis the Housing Provider shall provide an Annual Report, in the form attached as Schedule B to this Agreement, signed by a director or officer of the Housing Provider certifying to the City that:

- a. the Housing Provider, as named in this Agreement, continues to be the registered Housing Provider in fee simple of the Lands or leasehold tenant of the Lands;

- b. the Housing Provider continues to be a registered non-profit or co-operative organization and has not been dissolved;
- c. The Housing Provider continues to be in possession and control of the Lands and that the holders of any mortgagees (if any) of the Lands have not taken or otherwise commenced to take any remedial actions they are entitled to by contract or at law to take possession or control of or over the Lands; and
- c. to the best of that officer's or director's knowledge, after due inquiry, the Housing Provider is in compliance with the terms of this Agreement;
- d. Savings from property taxes, generated through the property tax exemption have been directed towards capital repairs, the development of new affordable housing units, or to improve affordability of units in the development.

RECORDS AND AUDITS

26. The Housing Provider shall:

- a. maintain financial records, consistent with generally accepted accounting principles, 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 and copy such records at all reasonable times;
- c. permit the City to conduct an audit or investigation of the Housing Provider in respect of the affordable housing units within the MHPF; and
- d. retain all such records that relate to the MHPF for not less than seven (7) years from the end of the respective Fiscal Year.

27. No provision of the Agreement will be construed so as to give the City any control whatsoever over the Housing Provider's records.

28. 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 subject to compliance with all privacy laws of Canada.

29. The City may cause its employees, agents or City of Ottawa Auditor General to conduct an audit, investigation or inquiry in relation to the Housing Provider's affordable housing units within the MHPF, and the Housing Provider shall cooperate 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.

30. The Housing Provider shall, for statistical purposes, supply information as required by the City from time-to-time, provided such information is reasonably available and in compliance with applicable privacy laws of Canada, as determined by the City.

GENERAL

31. **Entire Agreement.** This Agreement contains all the covenants, agreements and understandings between the parties concerning its subject matter.

32. **Enurement.** This Agreement shall ensure to the benefit of and be binding upon the parties hereto and their respective heirs, successors and permitted assigns.

33. **Laws of Province.** 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.

34. **Registration.** The Housing Provider acknowledges that the City may register this Agreement and or the relevant by-law on title to the Lands immediately upon approval and execution of this Agreement by both parties. The Housing Provider further agrees that the City may register a security against title to the Lands to ensure that the municipal capital facility stays within the definitions of affordable housing for the term of the Agreement.

35. **Costs.** The Housing Provider is responsible for its own costs and expenses incurred in connection with the preparation, execution, enforcement, registration and implementation of this Agreement.

36. **Assignment.** The Housing Provider acknowledges and agrees that the City is providing the designation and tax exemption only to the Housing Provider except as provided in this Section. The Housing Provider may not assign this Agreement except in accordance with the following:

- a. The Housing Provider acknowledges and agrees that where the Housing Provider ceases to own the Lands or any part thereof for any reason, the City shall cease to provide the designation and tax exemption to the Housing Provider;
- b. Notwithstanding **Subsection 36 (a)** where all or a portion of the Lands are sold the provisions of this Agreement may be assigned by the Housing Provider with the express written consent of the City acting reasonably in its sole discretion but always subject to the conditions set out in By-law No. 2024-320;

- c. As a condition of the City's consent to assign this Agreement and all or part of the designation and tax exemption, the Housing Provider agrees to obtain from any purchaser an agreement, satisfactory to the City acting reasonably, whereby the purchaser shall assume the Housing Provider's obligations pursuant to this Agreement with respect to all or a portion of the Lands being purchased, failing which this Agreement shall be terminated; and,
- d. Where this Agreement has been assigned, apportionment shall be as agreed to between the Housing Provider and the purchaser(s) and must be satisfactory to the City in its sole discretion, acting reasonably. The parties acknowledge that purchasers shall not be entitled to designation and tax exemption unless the Housing Provider and the City agree in writing.

37. **Joint and Several.** This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and permitted assigns. If more than one person executes this Agreement the obligations of such persons hereunder shall be joint and several.

38. **Invalidity of Provision of Agreement.** 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.

39. **Time of the Essence.** Time shall be of the essence in this Agreement.

40. Annexes. As hereinafter set out below, the following Annexes are attached to and form part of this Agreement:

Annex "A" Description of Lands;

Annex "B" By-law 2024-__

41. **Amendment of Agreement.** This Agreement may be amended on the mutual consent of the parties provided that such amendment shall be evidenced by a further written document.

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

43. **Further assurances.** The Housing Provider will provide such further assurances as the City may request from time to time with respect to any matter to which the Agreement pertains, and will otherwise do or cause to be done all acts or things necessary to implement and carry into effect the terms and conditions of the Agreement to their full extent.
44. **Date of Agreement.** This Agreement shall be signed by the authorized signing officers for the Housing Provider, and by the authorized signing officer for the City. The effective date of this Agreement shall be the date first written above.
45. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be deemed to be an original and all of which together shall constitute one and the same agreement. Counterparts may be executed either in original, electronic pdf or telecopied form and the parties to this Agreement shall adopt any signatures received by email or receiving telecopier machine as original signatures of the parties.

(signature page follows)

(signature page)

IN WITNESS WHEREOF the parties hereto have duly executed this Agreement.

CITY OF OTTAWA

Per: _____

Name:

Title: Director, Housing & Homelessness
Services/Director, Housing Solutions &
Investment Services

I have authority to bind the Corporation.

(HOUSING PROVIDER)

Per: _____

Name:

Title:

I have authority to bind the Corporation.

ANNEX "A"

Legal Description of Lands

(address), legally described as follows:

**

PIN **

ANNEX "B"

BY-LAW NO. 2024-_____

Insert property specific signed by-law