

**Cape Breton Regional Municipality**

**Special Council Meeting**

**AGENDA**

**TUESDAY, DECEMBER 20<sup>TH</sup>, 2022**

**10:00 A.M.**

Via Zoom Videoconferencing

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# Cape Breton Regional Municipality

## Special Council Meeting

Tuesday, December 20<sup>th</sup>, 2022

10:00 a.m.

### AGENDA ITEMS

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Land Acknowledgement

**10:00 a.m.**

Roll Call

1. APPROVAL OF AGENDA: (Motion Required)

2. BUSINESS ARISING:

2.1 Council – July 12, 2022:

- a) CBRM Wastewater Financing and Governance: Greg Campbell, Manager of Technical Support Services, Water Utility (See page 4)

2.2 In Camera Council – December 9, 2022:

- a) Canada Mortgage and Housing Corporation (CMHC) Rapid Housing Initiative: Michael Ruus, Director of Planning & Development (See page 38)

- *Referral to Council for discussion*

**Adjournment.**

**Wastewater Utility Development and Financing:**

Greg Campbell, Manager of Technical Support Services, Water Utility, reviewed the Issue Paper and Power Point presentation in the agenda package and recommended that Council direct staff to proceed with scoping the development of a Wastewater Utility Model that provides rate-based cost recovery and to report back to Council with a revised rate methodology, service delivery plan, legislative requirements, and revised timetable by September 2022.

After discussion, the following motion was put forward:

**Motion:**

Moved by Councillor Green, seconded by Councillor Parsons, that staff be directed to proceed with scoping the development of a Wastewater Utility Model that provides rate-based cost recovery and to report back to Council with a revised rate methodology, service delivery plan, legislative requirements, and revised timetable by September 2022.

**Motion Carried.**

# CBRM Wastewater Financing & Governance

November 15<sup>th</sup>, 2022

1

## Agenda

1. Welcome / Acknowledgements
2. Council direction / Due Diligence
3. Information Report Highlights
4. Workshop Highlights
5. Implementation Timetable
6. Recommendation

2

## Acknowledgements

- Gerry Isenor, P. Eng      *Gerry Isenor Consulting Ltd.*
- Blaine Rooney, CPA      *Blaine S. Rooney Consulting Ltd.*
- Ken Brothers, P. Eng      *Hydrotech Consulting Ltd.*
- Kevin Latimer, KC      *Cox & Palmer*

3

## Council Direction

- Council decision to proceed with scoping – July 12th, 2022
- **Motion** that staff be directed to proceed with scoping the development of a Wastewater Utility Model that provides rate-based cost recovery and to report back to Council with a revised rate methodology, service delivery plan, legislative requirements, and revised timetable by September 2022. **Carried.**

4

## Due Diligence

- Scoping / options with Consultants – August 2022
- CAO / Staff roundtable – Sept. 2022
- Legal / Governance briefing – Oct. 6<sup>th</sup>, 2022
- Nova Scotia Utility and Review Board briefing – Nov. 1<sup>st</sup>, 2022
- Information Report – Nov. 8<sup>th</sup>, 2022
  - Best Practice
  - Staff Recommendation
- Workshop – November 15<sup>th</sup>, 2022
  - Report Feedback from Council
  - Develop Q & A Document

5

## Information Report Highlights

- Best Practice Approach
- Governance
  - Commission Model
- Funding/Financial
  - User Pay Model
- Organization
  - Combined Water & Wastewater Management Structure

6

## Workshop Highlights

- Governance Model
  - Commission Structure
  - Rate Setting by Board
  - Commission Composition
  - Share/ Leverage CBRM Resources
  - PUA Process is “just and reasonable”
- Funding Solution
  - Recognize / Recover True Costs
  - Charge Based on Water Consumption
  - User Pay – Fair & Equitable
  - Consumer Controls Own Wastewater Fees
  - Mitigates Increased Tax Burden
- Comprehensive Q & A Document

7

## Implementation Timetable

- Council decision – Dec. 2022
- Province / special legislation to establish commission model and guide transition
- Prepare asset transfer agreement(s) / service level agreements / supporting by-laws and regulations
- Implement administrative / organizational structure for service delivery
- Application to NSUARB to approve transfer of assets and approve Schedule of Rates and Charges
- Operational - 2025

8

## Recommendation

It is recommended that Council:

- Approves adoption of a combined water/wastewater Commission structure for delivery of water and wastewater services to be regulated by the NSUARB;
- Authorize CBRM staff to pursue the legislative and governance changes necessary to establish and implement the Commission as described above; and
- To report back to Council with a workplan and associated budget no later than February 28, 2023.



*A Community of Communities*

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## **Information Report – Wastewater Utility Scoping**

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**TO: *Mayor and Council***

**November 8th, 2022**

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### **Origin**

On July 12<sup>th</sup>, 2022, staff presented an issue paper to Council titled “Wastewater Utility Development and Financing” for CBRM (see Attachment “A”). Discussion at the meeting included consideration of the significant challenges in financing wastewater services and the adoption of a utility model with user-pay rate - based cost recovery.

To address these challenges and in recognition of regulatory compliance obligations pursuant to the Federal Wastewater Systems Effluent Regulations (WSER) under the Fisheries Act, the following direction to staff was given via motion of Council:

***Motion that staff be directed to proceed with scoping the development of a Wastewater Utility Model that provides rate-based cost recovery and to report back to Council with a revised rate methodology, service delivery plan, legislative requirements, and revised timetable by September 2022. Carried.***

As a result of the direction given by Council, staff conducted further research/investigations and wish to present an overview of the findings for Council's consideration. In essence, staff recommends delivering water and wastewater services under a Commission structure with NSUARB regulation.

### **DISCUSSION**

Nowhere is the scope of municipal responsibility changing more rapidly than in wastewater services. CBRM is required to meet the wastewater treatment requirements arising from Federal wastewater discharge regulations which will trigger \$156,000,000 in new treatment facilities and an associated additional annual expenditure of \$3,800,000 in treatment related costs by 2025. Future capital expenditures of \$360,000,000 for new treatment infrastructure is also required over the next 15-20 years, with no funding formula currently in place. The capital financing and operational impacts will involve significant investments by taxpayers in CBRM to pay for these facilities. Then, there will be the ongoing capital replacement demands necessary for a sustainable treatment operation into the future.

In the development of this report, staff have focused on the exploration of industry accepted best practices for all phases of wastewater service delivery. Utilizing a best practice approach to service delivery ensures that CBRM residents are provided a sustainable service that is both efficient and effective, and done so at the lowest possible cost. The capacity of the residents of CBRM to incur the financial impacts associated with wastewater service has been at the forefront of all discussions. The future wastewater treatment requirements not only represent a substantial increase in cost of service, but they also represent an enormous increase operational complexity, bringing about additional requirements for management, oversight, and accountability. The current capacity of both management staff, in their ability to deliver and manage these capital infrastructure improvements in the most cost-effective manner, as well as the future requirements of council to manage and oversee the policy directives to ensure funding and compliance requirements are met, must also be considered.

Staff have identified three key areas for reform related to wastewater service delivery in CBRM: *Governance, Funding, and Organization*. Governance and Funding are the primary responsibility of Council. Staff have identified the best practice options available to address the current issues and the implications of each. With respect to Organization, this initiative will follow Council's direction and will not be addressed in detail in this report. The operational synergy opportunities will be tabled in the Organization section of the report to further improve both water and wastewater service delivery. Staff will work in accordance with Council's direction to implement the preferred approach for improving wastewater service delivery in CBRM.

## **INVESTIGATIONS / DUE DILIGENCE**

Following the July 12<sup>th</sup>, 2022, meeting of Council, and with the assistance of our external consulting team (see Attachment "B"), staff explored the options for the establishment of a wastewater utility model that provides rate-based (v. tax assessment based) recovery of costs associated with a sustainable wastewater service delivery system. The process has focused on identifying the optimum governance structure and funding strategy to meet anticipated needs and achieve compliance with Federal Effluent Discharge Regulations. By way of summary, staff investigations included the following:

- Council decision to proceed with scoping – July 12<sup>th</sup>, 2022
- Scoping / options – August 2022
- CAO / Staff roundtable – Sept. 2022
- Legal / Governance briefing – Oct. 6, 2022
- Nova Scotia Utility and Review Board (NSUARB) briefing – Nov. 1, 2022

A condensed summary of the relevant background and items for consideration was provided to the NSUARB by staff for purposes of the recent NSUARB briefing (November 1, 2022). A copy of the background document is attached as Attachment "C" for your convenience.

## GOVERNANCE

Currently wastewater services in CBRM are delivered through the Engineering & Public Works department with costs recovered through tax assessment rates approved by CBRM Council. Water service delivery is managed in-house with rates ratified by Council and, ultimately, reviewed and approved by the Nova Scotia Utility and Review Board (NSUARB). As such, the water utility operation must conform to the requirements of the *Public Utilities Act (PUA)* like all other water utilities in the province. No such regulatory oversight now exists in respect of CBRM wastewater services.

In accordance with the FCM publication, Good Governance in Restructuring Water Supply, A Handbook, municipal governments often site three main goals for restructuring, namely:

1. Restructuring to improve performance
2. Restructuring to source financing
3. Restructuring to meet new legislative requirements

Based on the current state of wastewater operations in CBRM, all three of these objectives come into play when looking at an alternative structure for wastewater delivery. The first thing that needs to be addressed is governance to proceed with a restructured wastewater service delivery model. How authority is exercised, and how operations are managed is critical to the success of the entity.

With the current wastewater situation, it's critical that the governance structure optimizes the chance for long-term financial and infrastructure sustainability.

The similarities and linkages with the water utility provide a compelling opportunity to restructure the wastewater division of Public Works into a wastewater utility, integrated with the management of the water utility. This utility structure can maximize the operational strengths and provide efficiencies in the delivery of an overall environmentally focussed water / wastewater service.

For governance to be efficient and effective, the overall jurisdiction for rates should be subject to NSUARB oversight and regulation. After consideration of various alternative models (see Attachment "C"), staff recommend adoption of a Commission structure and a separate wastewater utility section that would deliver service in a consistent and integrated manner within a regulated framework. This would afford CBRM the best possible governance approach to tackling the infrastructure funding gap and providing long term sustainable wastewater service delivery. (See graphic at Attachment "D").

The combined water/wastewater Commission structure would be a variation on the Halifax Regional Water Commission model - currently the only combined water / wastewater utility in the province regulated by the NSUARB, operating as such since 2007. As is the case with

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water regulation, the NSUARB operates independently from government with a mandate to balance rate payers needs for fair rates with the utility's need to invest in and support sustainable service delivery over the long term. Utility Board personnel have the expertise and responsibility to review the evidence and make decisions about the financial investments necessary to best serve the people who pay the bills.

Under the proposed Commission structure, Council would have a controlling majority membership in the Commission but retain only indirect accountability for system operations and environmental compliance. The Commission would be responsible to have rates approved by its governing board and, ultimately, by the NSUARB (as is currently the case for domestic water). Under the proposed approach, the Commission would conform to the requirements of the *Public Utilities Act* in respect of both water and wastewater.

For the NSUARB to have jurisdiction for wastewater operations, including rate setting authority, legislative changes would be required. Special legislation – similar to the *Halifax Regional Water Commission Act* would be necessary to create a Commission to provide water and wastewater services subject to the mandate of the NSUARB. Should Council approve moving forward with this approach, Council would need to consider the structure and composition of the Commission Board. By way of example, the HRWC Board is comprised of eight representatives including the Mayor, three Councillors, three private sector citizens appointed by Council and an HRM staff representative appointed from the CAO's office. The representative from the CAO's office is a non-voting member. The purpose of the CAO appointee is to ensure a closer day-to-day working relationship between the municipality and the Commission. As we understand it, the current makeup of the HRWC Board was established to provide a balance between accountability of HRM Council and a business focus from an arm's length entity. In short then, in HRWC's case, Council still has representation through the makeup of the Commission Board which includes four members of Council. Rate applications must be approved by the Commission Board before submission to the NSUARB. It is noteworthy that the NSUARB's rate setting process also involves a public hearing component to take feedback from the public.

Should Council approve moving forward with the proposed water/wastewater commission model staff would proceed with investigations and preparations necessary to establish an operational commission structure subject to NSUARB regulation by 2025. Much work remains to be done but, from a high level, we anticipate the following key components of the workplan:

#### **Implementation / Draft Timetable 2023-2025**

- Council decision – Dec. 2022
- Communications / internal and external
- Province / special legislation to establish new commission model and guide transition
- Prepare asset transfer agreement(s)
- Prepare service level agreements
- Design and implement administrative / organizational structure for service delivery

- Consider and approve by-laws, regulations, and policies to support new model
- Co-ordination and alignment of support services as appropriate
- Prepare first operating, capital, and utility budgets
- Provide Council regular updates on implementation activities
- Prepare draft Schedule of Rates and Charges
- Prepare draft Rules & Regulations
- Prepare draft business plan
- Present wastewater utility application and obtain approval from the NSUARB
- Operational by 2025

The above list is by no means exhaustive. Should Council decide to proceed as proposed staff would intend, a draft workplan and budget for the project would be prepared for Council consideration.

## **FUNDING/FINANCIAL**

In determining the approach to the funding/financing of wastewater service delivery, it is best practice to consider the true cost of service, that is to ensure all costs associated with the delivery of wastewater services are properly identified and accounted for. These costs include, but are not limited to, capital expenditures, debt servicing, operation, maintenance, and depreciation costs. The importance of the proper recognition of true cost is paramount for transparency and accountability in the delivery of a public service.

### ***Wastewater Rate Methodology***

The preferred rate methodology is that of a user-pay model (also referred to as cost causation model) that recognizes the true costs of providing wastewater service in CBRM. The model being recommended has been developed by the Water Environment Federation (WEF) and is considered industry best practice for fair and equitable cost recovery of wastewater service. This rate model has already been subjected to public hearing by the NSUARB during rate applications by Halifax Water and has been deemed as acceptable practice in Nova Scotia by the regulator. It applies charges based on quantity and quality of effluent discharged. The quantity of effluent discharged is directly proportional to the amount of potable water supplied to the user and can therefore be controlled by the user. Use less water, create less effluent, pay less of a user fee. The provision for increased fees based on effluent quality (currently this provision does not exist under tax) allows for users discharging effluent at a higher strength, typically industrial and some commercial users, to be charged more as the higher strength effluent costs more to treat.

Like the current water rate model, user fees would be charged as a calculation of base charges and volumetric charges. Base charges will cover fixed costs (like debt repayment and salaries), which do not change with less usage and are charged proportionally according to meter size. The volumetric rate covers variable costs such as power and chemicals used in the treatment and collection processes, that do change with changes in usage. The volumetric

rate is applied to metered volume of potable water entering the residence and represents the opportunity for the user to directly influence their cost by using less water.

Under the user-pay model, all users are treated equally, and costs are recovered from all users. Unlike the taxation model, where some users are exempt from taxation and therefore exempt from charges, the user pay approach ensures that all users are charged the appropriate fees for their individual use of wastewater services.

### ***External Funding Sources***

No matter the way in which cost is recovered (tax or rate), the charges paid by users for wastewater services will be a function of the cost of service. This is very important in the context of CBRM as the cost of service is being directly and substantially influenced by the requirement for capital expenditure to meet the federal regulations. The need for CBRM to leverage external financial resources has never been greater from a public affordability lens, recognizing the essential nature of wastewater services. The requirement for both staff and political actors to engage and lobby other levels of government for financial support to offset capital costs and in turn keep user fees down cannot be overstated.

### **ORGANIZATION**

Another way to help reduce true cost of service is to ensure that these services are delivered as efficiently and effectively as possible. Capital projects must be delivered on time and budget, as cost overruns in the construction phase will result in increased project costs. Subsequently, the effective and efficient operation and maintenance of infrastructure and responsible management of organizational processes is required to ensure that services are delivered to the highest standard for the lowest cost. To achieve this, proper strategic planning, performance management and oversight, and hence the proper capacity at the management level is fundamental. Discussions related to organizational performance have centered around a model of efficient and effective service delivery, with a focus on cost control and cost reduction in both capital project delivery and the ongoing operation and maintenance of new and existing wastewater infrastructure.

### ***Combined Water & Wastewater Management Structure***

A Water and Wastewater Commission provides autonomy and operational focus on integrated environmental services. The NSUARB reporting requirements, rate setting, and regulatory requirements can be better managed within an integrated department structure. The co-location of water, wastewater and public works operations will leverage the existing work bays at the operation depots, field yards and storage compounds, inventory stores, health and safety, vehicle dispatch and administrative support at these locations. This integrated model will ensure no duplication of field offices and encourage staff sharing efficiencies for snow removal or other peak work demands in CBRM or in the utilities through Service Level Agreements (SLA) and cost sharing. This model provides the most efficient structure to retain

current work efficiencies and enable the commission's direct control of works planning and designated staff during normal operating conditions.

A water / wastewater commission will have designated staff to conduct all the daily operations and maintenance works from the existing four Public Works (PW) depots in CBRM. These operations include wastewater collection and manhole maintenance, excavation works, sewer backup services and repairs. The level of service and performance standards will be set in an SLA for each service and performance monitored by the utility. In times of any peak works exceeding the current staff allocation, an agreed upon SLA between PW and the Commission will provide the backup resources. Regular quarterly management meetings with PW and the Commission will provide service delivery oversight, monitoring and ensure operational performance effectiveness and efficiency.

The CBRM corporate services expenses for Council, administrative management, legal, HR, purchasing and finance will be funded through the wastewater rates on a pro-rata allocation basis. The Public Works garage space used by wastewater services and associated fleet costs will also be supported by the wastewater rates. This cost allocation method is currently utilized for the Water Utility shared services with CBRM. The size and operational budgets for the new water and wastewater utilities dept. will be equivalent to the resulting Public Works Department, in the range of \$40 - \$50 M/ year. The Public Works Department will continue to operate in most of its normal functions and operating locations to include:

- Transportation and roads maintenance
- Storm water and catch basins
- Transit Operations
- Fleet Maintenance
- Solid Waste Management
- Streets Lights

In summary, a combined water and wastewater management structure under a Commission provides an opportunity to improve the organizational model and service delivery integrated with existing CBRM facilities and support services.

#### **NEXT STEPS**

Staff will review the highlights of this report and discuss its key findings and recommendations in a Council workshop format.

Council is invited to reflect on the information contained in this report as it relates to the principal objectives here: adoption of a governance structure and funding model that allows the municipality to establish a predictable and sustainable wastewater service delivery system for CBRM.

With that in mind, it is recommended that Council:

Approves adoption of a combined water/wastewater Commission structure for delivery of water and wastewater services to be regulated by the NSUARB;

Authorize CBRM staff to pursue the legislative and governance changes necessary to establish and implement the Commission as described above; and

To report back to Council with a workplan and associated budget no later than February 28, 2023.

**Respectfully submitted:**

ORIGINAL SIGNED BY

  
**Wayne MacDonald, P.Eng.**  
**Director of Engineering and Public Works**

ORIGINAL SIGNED BY

  
**Greg Campbell, P.Eng.**  
**Manager of Technical Support  
Services - Utilities**

#### **Attachments**

Attachment A – CBRM Council Issue Paper titled “Wastewater Utility Development and Financing”

Attachment B – Consulting Team Biographies

Attachment C – NSUARB briefing document – November 1, 2022

Attachment D – CBRM Wastewater Utility Rate-Based Cost Recovery Model Summary Graphic

***Attachment A – CBRM Council Issue Paper titled “Wastewater Utility Development and Financing”***

**Issue Paper**

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**TO: Mayor and Council**

**July 05, 2022**

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**RE: Wastewater Utility Development and Financing**

In response to the Federal Environmental Discharge Regulations (WSER), and by Motion of Council, the following treatment systems are currently under construction in CBRM:

- Sydney Harbor West (2023)
- Port Morien (2025)
- Glace Bay (2025)

This evolution of wastewater treatment increases operational complexity and brings about additional requirements for oversight, accountability, compliance, and infrastructure. All these factors constitute an increase in cost of service, as increased costs in the form of debt repayment, operating expenditures and development of capital reserves are now required.

**Financing**

Wastewater is currently funded through taxation as a function of assessed property value. The current tax rate is sufficient to cover current expenses, but with annual wastewater costs expected to increase by \$2.1 million in 2023 and again by \$1.7 million in 2025, a mechanism for additional cost recovery is required.

**Discussion**

CBRM has committed cost increases associated with new wastewater plant infrastructure in the range of \$3.8 million annually by 2025. Additional treatment plant infrastructure will be required in the future to reach full WSER compliance by 2040. Taxation remains a viable option, however, increases in tax rates or reductions to other services or capital programs will be required to make up the revenue deficiency. CBRM previously had immense success building treatment facilities driven by regulatory compliance requirements in the Water Utility by following a utility model with user-pay rate-based cost recovery. Evaluation of a similar approach to wastewater should be considered by Council.

### **Wastewater Utility Development**

The development of a wastewater utility in CBRM is a major endeavor that will require considerable time and effort. Infrastructure, operational and resource considerations in addition to wastewater rate development, legal and regulatory requirements, SAP and billing configuration, and communications roll out are all activities required to successfully deliver a Utility. Staff estimates suggest that utility development will take a minimum of 18 months, however, proper scoping of each of these items is required to provide a better understanding of how a utility will work and how it will affect residents. It will also help to better estimate costs, timelines, level of effort required.

If council is to make an informed decision on its preferred approach to financing wastewater, further evaluation of a utility model with user-pay rate-based cost recovery is recommended.

### **Recommendation:**

**Council direct staff to proceed with scoping the development of a Wastewater Utility Model that provides rate-based cost recovery; and to report back to Council with a revised rate methodology, service delivery plan, legislative requirements, and revised timetable by September 2022.**

We respectfully request a motion of Council to direct staff to proceed with scoping a utility model with user-pay rate-based cost recovery for wastewater and to report back to council for further evaluation, as recommended.

### **Respectfully submitted:**

ORIGINAL SIGNED BY

  
**Wayne MacDonald, P.Eng.**  
Director of Engineering and Public Works

ORIGINAL SIGNED BY

  
**Greg Campbell, P.Eng.**  
Manager of Technical Support  
Services - Utilities

***Attachment B – Consulting Team Biographies***

**Personal Information Removed**

***Attachment C – NSUARB briefing document – November 1, 2022***

# CBRM WASTEWATER INITIATIVE

NSUARB Orientation  
November 1, 2022 @ 2:00 p.m.

1

## OBJECTIVES

- Meet wastewater service demands in a fiscally responsible and sustainable framework;
- Adopt best management practices for wastewater service delivery;
- Change approach to funding and managing service delivery in order to:
  - Set rates to achieve full cost recovery for operations and system replacement;
  - Forecast predictable rate adjustments as required, and
  - Meet Federal Discharge Regulations.
- Ensure just and reasonable rates for consumers.

2

## BACKGROUND

- Current method of cost recovery – tax assessment;
- Accountability for sustainable funding currently with Council;
- Need to adopt consumption based / user pay model.
- Aging infrastructure / infrastructure deficit; and
- Challenges meeting current and future requirements.

3

## NSUARB OVERSIGHT

- Ensures consumers receive safe and reliable wastewater services at a reasonable rate;
- Arm's length oversight, adjudication and direction;
- Ensures sustainable financial resources to:
  - Meet our budget;
  - Implement capital expenditure plans; and
  - Maintain / renew infrastructure.

4

## CBRM Water and Wastewater Integrated Services Model

- Independent organizational structure for each service;
- Ensures operational responsibilities are aligned to accountable dept. management;
- Integrated water and wastewater utility approach to share similar functions: Plant operations, technical services, regulatory compliance, volume-based billing; and
- Leverage existing efficiencies with CBRM on co-shared facilities, administration services, engineering /asset management etc., to eliminate services duplication.

5

## ALTERNATIVE MODELS

1. Combined W/WW Utility / Commission Structure;
2. Wastewater Commission Only / Regulated by NSUARB;
3. CBRM W/WW Utility / Regulated by NSUARB; and
4. CBRM Wastewater Utility / Regulated by NSUARB.

6

## DECISION-MAKING/ DUE DILIGENCE

1. Exploration / Investigations (July 2022 – December 2022);
2. Implementation phase (January 2023 – June 2024); and
3. Operational phase (2024 – 2025).

7

## BOARD FEEDBACK

1. Legislative & Regulatory Requirements;
2. Timing;
3. Submission Requirements;
4. Other Comments/Feedback; and
5. Wrap Up / Next Steps.

8

***Attachmant D – CBRM Wastewater Utility Rate-Based Cost Recovery Model Summary Graphic***

**DRAFT – FOR DISCUSSION PURPOSES ONLY**

**CBRM WASTEWATER UTILITY  
RATE-BASED COST RECOVERY MODEL**

**FINANCIAL**

- Adopt consumption-based method v. tax assessment
- Recognize / recover full cost
- Charges based on amount of domestic water supplied
- Metered volume approach
- User pay – fair & equitable
- User controls own wastewater fees
- Mitigates increased tax burden

**GOVERNANCE**

- NSUARB sets rates v. Council responsibility
- Water / wastewater commission structure
- Integrated water and wastewater approach to leverage CBRM resources
- Ensures revenue stability to maintain/renew wastewater infrastructure
- Meet Federal Discharge regulations
- Rates are "just and reasonable" for consumers

**IMPLEMENTATION / TIMETABLE  
(2023-2025)**

- Council decision – Dec. 2022
- Province / special legislation to establish commission model and guide transition
- Prepare asset transfer agreement(s) / service level laws and regulations
- Implement administrative / organizational structure for service delivery
- Application to NSUARB to approve transfer of assets and approve Schedule of Rates and Charges
- Operational - 2025

**CBRM COUNCIL WORKSHOP  
November 15, 2022**

**AGENDA**

1. Welcome / Intros / Workshop objective (10 mins);
2. Council direction / due diligence (10 mins);
3. Breakouts (80 mins):
  - i. Funding solution (40 mins); and
  - ii. Governance model (40 mins).
4. Reconvene / feedback (15 mins); and
5. Motion / next steps (5 mins).

## **BREAKOUT 1 / DISCUSSION POINTS**

### **FUNDING SOLUTION**

1. Recognize / recover true costs;
2. Charge based on water consumption;
3. User pay – fair and equitable;
4. Consumer controls own wastewater fees; and
5. Mitigates increased tax burden.

## BREAKOUT 2 / DISCUSSION POINTS

### GOVERNANCE MODEL

1. Commission Structure;
2. Rate setting by Board;
3. Commission Composition;
4. Share / leverage CB resources; and
5. PUA process is "just and reasonable".

**CBRM Wastewater  
Workshop**  
November 15<sup>th</sup>, 2022

1

**Agenda**

1. Welcome / Intros / Workshop objective (10 mins);
2. Council direction / due diligence (10 mins);
3. Breakouts (80 mins):
  - i. Funding solution (40 mins); and
  - ii. Governance model (40 mins).
4. Reconvene / feedback (15 mins); and
5. Motion / next steps (5 mins).

2

**Introductions/Acknowledgements**

- Gerry Isenor, P. Eng     *Gerry Isenor Consulting Ltd.*
- Blaine Rooney, CPA     *Blaine S. Rooney Consulting Ltd.*
- Ken Brothers, P. Eng     *Hydrotech Consulting Ltd.*
- Kevin Latimer, KC     *Cox & Palmer*

3

**Council Direction**

- *Motion* that staff be directed to proceed with scoping the development of a Wastewater Utility Model that provides rate-based cost recovery and to report back to Council with a revised rate methodology, service delivery plan, legislative requirements, and revised timetable by September 2022. *Carried.*

4

**Due Diligence**

- Council decision to proceed with scoping – July 12th, 2022
- Scoping / opt-oes – August 2022
- CAO / Staff roundtable – Sept. 2022
- Legal / Governance briefing – Oct. 6<sup>th</sup>, 2022
- Nova Scotia Utility and Review Board briefing – Nov. 1<sup>st</sup>, 2022
- Information Report – Nov. 8<sup>th</sup>, 2022
  - Best Practice
  - Staff Recommendation

5

**Breakout Sessions**

- Objective
- Format

6

### Reconvene

- What We Heard
  - Funding Solution
  - Governance Model
- Feedback

7

### Implementation Timetable

- Council decision - Dec. 2022
- Province / special legislation to establish commission model and guide transition
- Prepare asset transfer agreement(s) / service level agreements / supporting by-laws and regulations
- Implement administrative / organizational structure for service delivery
- Application to NSUARB to approve transfer of assets and approve Schedule of Rates and Charges
- Operational - 2025

8

### Recommendation

It is recommended that Council:

- Approves adoption of a combined water/wastewater Commission structure for delivery of water and wastewater services to be regulated by the NSUARB;
- Authorize CBRM staff to pursue the legislative and governance changes necessary to establish and implement the Commission as described above; and
- To report back to Council with a workplan and associated budget no later than February 28, 2023.

9

### Next Steps

- Staff to Provide Q & A Summary from Workshop
- Council Decision – December 8<sup>th</sup>, 2022
- What Further Information, If Any, Is Required to Decide?

10

## **Wastewater Services - Q & A**

### **1. Where does wastewater go?**

Wastewater leaves residential or commercial property through a service lateral and enters a piped collection system. It then either travels to a treatment facility, where it is treated before being discharged to the environment, or it is sometimes discharged directly to the environment without treatment. New federal regulations now require all wastewater be treated to a high standard before being discharged so those areas without treatment will now require new facilities to comply.

### **2. Who is responsible for wastewater service delivery?**

Currently, wastewater service delivery is the responsibility of CBRM Engineering and Public Works Department and is provided by the CBRM Wastewater Department.

### **3. How do we currently recover wastewater costs?**

Wastewater costs are charged on your tax bill at a rate of \$ 0.191 per \$100 of assessment. Property assessment has no relationship to use of wastewater services.

### **4. How are other local municipalities dealing with wastewater financing?**

No other major town or municipality in the province or the Atlantic Region is known to use a taxation approach for cost recovery of Wastewater Services. However, only one wastewater utility is fully regulated (Halifax Water). All other municipalities have rates that are governed by bylaws and ratified by council. The accuracy of the charges for cost recovery in the various municipalities across Atlantic Canada varies and, in many cases, the true costs are not properly accounted for. In many instances, debt servicing and other departmental costs are grouped into the general tax rate, so the user fees only cover a portion of the true costs of service. The major difference with CBRM compared to other local municipalities is high cost of compliance, mainly due to the unique geographical challenges surrounding wastewater service delivery. This brings about concerns with respect to customer affordability and capacity to meet regulatory requirements.

### **5. What changes are being proposed?**

It is being recommended that CBRM implement a Combined Water/ Wastewater Commission subject to the Public Utilities Act, with a user pay cost recovery model to recognize true costs of service and with oversight by the NSUARB. This will allow for a combined water and wastewater management structure for more efficient and effective service delivery, and utilizing industry best practice for governance, cost recovery and utility management. The commission would be responsible for the delivery of both water and wastewater services, allowing for consistent and responsible stewardship of the water resource from source to discharge.

## **6. What will the structure of the Commission Board be?**

There are many options for Commission Board make up, but CBRM will retain a majority controlling interest. A combination of Mayor/Council, staff and the public would likely make up the board composition and board appointment would be established through legislation.

## **7. What will the Wastewater rates be?**

An actual schedule of rates and charges is not currently available as full cost of service study and subsequent rate study is required. Should Council agree with the recommendation to adopt a user-pay model, staff will proceed to develop rates. The rate setting process is transparent and open to the public, with legislation that requires that rates be “just and reasonable”. The rates will be enough to cover the cost of service and apportioned fairly across customer classes, with no users being exempt from charges.

## **8. What are the benefits of a user pay model?**

A user pay model applies a water in/ water out approach, which is widely accepted as industry best practice for fair and equitable cost recovery of wastewater service. Most of the water that enters a property, leaves as wastewater so wastewater is directly proportional to the amount of water supplied. The approach is fair and equitable, as all users pay for their fair share of services. There is an element of user control as opposed to property assessment, which property owners have no control over.

## **9. How can a user control their bill?**

A user can control their bill by using less water. They can replace old fixtures with more modern and efficient ones (which often can be associated with manufacturer rebate programs) or they can simply only use water for necessities. The element of control is unique to user pay as there is no control over tax assessment and changes to tax rates requires council ratification. Furthermore, in a Commission structure, the opportunity for public participation on the board allows for public input at the board level in all aspects of wastewater service delivery.

## **10. What will be the effects on low-income families?**

The assumption that a low tax assessment coincides with an inability to pay is incorrect. In addition to the ability to control costs by using less water, better affordability supports can be explored to impact more directly those most negatively affected by increasing costs. Council and staff share similar concerns and more targeted affordability programs should be considered, including changes to low-income property tax exemption policy. Conservation programs to aid in reducing water usage are currently in place through ACAP Cape Breton.

### **11. Will the implementation of fees be phased in?**

It is recommended to not phase in the implementation of rates. The service level received at the property line will continue to be the same for all. Proposed construction schedule is subject to change based on availability of funding. We are a single municipality, and we all benefit collectively from the improvements to the local environment associated with the collective wastewater treatment. Under the current taxation model, all residents pay the same tax rate for wastewater service, regardless of local costs incurred. We would expect to continue with the same line of thought. The approach is not inconsistent with how CBRM typically funds infrastructure as financial resources are pooled and spent based on need, and not divided up by area.

### **12. Will there be any effects on growth?**

The disproportionate nature of the taxation approach is a deterrent to commercial growth and new residential construction. If CBRM continues with a taxation model for wastewater cost recovery, this gap between customer classes will increase as taxes increase. A move towards a user pay model is expected to have a positive effect on both commercial and residential growth.

### **13. What if I have a well but am connected to municipal sewer?**

Provisions are made for those customers on well but connected to sewer. Since there is no measurement of water entering the property, they will receive a bill for sewer only. The bill is essentially based on the average of all 5/8 water customers. If the customer wants to challenge this estimate of usage, they can install a meter on the water source entering the dwelling (at their cost) to determine if they are using less than estimate average quantity.

### **14. Can we expand the service area?**

Service area expansion has always been at the discretion of CBRM Council. Council has the power to set the service area boundaries and will retain that power. Should wastewater services become regulated, the costs of future wastewater service expansion would not be from the proposed wastewater rates, as per NSUARB policy (like that of water). The funding for such expansion would have to come via some other sources, such as a local improvement charges, be included in the general CBRM capital program, or from provincial or federal programs, etc.

### **15. What about stormwater?**

Stormwater will remain the responsibility of Engineering & Public Works, along with transportation, fleet, transit, solid waste infrastructure and services.

### **16. How are customers being kept informed?**

Updates will be provided on the municipal website, on social media and through new releases. Councillors are also communicating directly with residents.

***The NSUARB gave the following feedback during the November 1<sup>st</sup>, 2022 meeting:***

1. Governance structure is at the discretion of the Municipality, however, the Commission model in Halifax is known and does work well.
2. The Board recognizes that the operating structure in CBRM will differ from Halifax and that CBRM will need to rely upon shared services with the Water Utility and CBRM for efficiency to provide service cost effectively.
3. The Board asks if CBRM has considered its current capacity to deliver the capital projects required to reach compliance.
4. Once legislative requirements have been met, the Board will require CBRM to make application, complete with a full cost of service and rate study. The application will be subject to public hearing. Wait times for hearings are 6-12 months so CBRM should allow for lead times for hearings and decision accordingly.

***Key Benefits for Council***

1. Shared responsibility with regulator
2. Removes burden of unavoidable tax increases
3. Removes burden of policy implementation process and operational oversight from Council
4. Clear and transparent financing arrangement allows public to connect charges incurred with service received

***Key Benefits for Staff***

1. Focused attention to ensure regulations are met within timelines
2. Increased leadership capacity to deliver services efficiently and effectively (and reduce cost of service)
3. Fair & sustainable funding mechanism to support capital planning and service delivery requirements



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## **MEMO**

**TO:** CBRM Council

**DATE:** December 06, 2022

**FROM:** Director, Planning and Development

**RE: Canada Mortgage and Housing Corporation (CMHC) Rapid Housing Initiative**

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### **BACKGROUND**

The Rapid Housing Initiative (RHI) provides funding to facilitate the rapid construction of new permanent affordable housing units for people and populations who are vulnerable and prioritized under the National Housing Strategy (NHS). The RHI takes a human rights-based approach to housing, with a focus on those in severe housing need and those experiencing or at risk of homelessness. The RHI funding streams include:

- Cities Stream – Pre-determined funding allocated to municipalities based on the number of renters in severe housing need and an effort to maximize geographical distribution.
- Projects Stream – Open application-based process that is competitive nationally.

CBRM has been selected by CMHC to participate as one of the communities in Round 3 of the Cities Stream to facilitate the construction of affordable housing under the program.

### **DISCUSSION**

With CBRM's selection for participation in the Cities Stream, Council will have to decide if it wishes to participate and take the responsibility to administer its share within the parameters set out by CMHC. Some of the key parameters include:

- **Affordability** – All units must be offered for occupation at less than 30% of the targeted population's household's before-tax income for a minimum of 20 years. The municipality will be required to confirm annually that all units serve the intended target population.

- **Target Populations** – All affordable units must be dedicated to populations who are vulnerable and in severe housing need. The income threshold is defined as the median income for vulnerable populations based on Census Data.
- **Expediency** – Projects must be completed within 18 months.

Municipalities that do not currently deliver or manage housing may appoint intermediaries to own and/or manage the project(s). The municipality is responsible for the outcomes of the initiative and is the only signatory to the contribution agreement. Recipients are fully responsible for cost increases and cost overruns and are also responsible for any annual operating deficits subsequent to occupancy, unless the provincial government or other agency assumes future operating responsibilities.

While municipalities certainly have a part to play in community housing, the provision of housing is the responsibility of the Province. The municipality does not currently tax for participation in affordable housing development, nor does it have the required dedicated resources to create, administer, and monitor this new program under challenging timelines.

### **NEXT STEPS**

If Council wishes to participate in this initiative, Council should:

- Pass a motion to enter into the agreement with CMHC for participation in the Cities Stream of the Rapid Housing Initiative; and
- Request Provincial financial support to offset the operational costs associated with the administration of any project(s) subject to the agreement, including any additional staff warranted for the municipality’s participation; and
- Pursue a commitment from the Province to release the municipality from any ongoing financial responsibility for its operation post-completion.

Respectfully submitted by:

*Original signed by:*

Michael Ruus  
Director, Planning and Development

## 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 rehabilitation<sup>1</sup> 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.

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<sup>1</sup> 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 therefore) 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 *Notional 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.

