

236 Number 183033



## Funding Agreement

This Agreement is made as of the date of last signature.

**Between:** HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF NEW BRUNSWICK, ("Province") as represented by the Premier,

**and:** THE CITY OF SAINT JOHN in the Province of New Brunswick ("City")

individually referred to as a 'Party' and collectively referred to as the 'Parties'

**Whereas** on September 19, 2017, the Premier pledged that the Province and the City would work together on a "new deal" for Saint John.

**And Whereas** the Province wants to undertake concrete measures to grow the economy of Saint John, and therefore the tax base and revenues of the City.

**And Whereas** the Province wants to avoid negative economic and social impacts of greater severity than the value of any financial savings.

**And Whereas** the Province recognizes the fiscal challenges in Saint John and offers to assist with solutions that will address the City's unique challenges and opportunities.

**And Whereas** the Province has already recognized Saint John's social fabric and the challenges it faces in the fight against poverty, as well as the importance of the Saint John economy and tax base by making record investments in the City.

**NOW THEREFORE**, the parties agree as follows:

### 1. PURPOSE OF THE AGREEMENT

The purpose of this **Funding Agreement** ("Agreement") is to establish the terms and conditions whereby partnerships will be established between the Province and the City for the purposes described herein.

### 2. INTERPRETATION

#### 2.1 DEFINITIONS

**"Agreement"** means this *Agreement* and all its schedules, as may be amended from time to time.

**"Agreement End Date"** means December 31, 2020.

**“Effective Date”** means the date of last signature of this Agreement.

**“Fiscal Year”** means from January 1<sup>st</sup> to December 31<sup>st</sup> of a calendar year.

**“Other Financial Assistance”** means funding from all sources, including funding from federal provincial and municipal sources, private sources and in-kind contributions.

### **3. ENTIRE AGREEMENT**

This Agreement comprises the entire agreement between the parties. No prior document, negotiation, provision, undertaking or agreement in relation to the subject of the Agreement has legal effect, unless incorporated by reference into this Agreement. No representation or warranty express, implied or otherwise, is made by the Province to the City except as expressly set out in this Agreement.

#### **3.1 DURATION OF AGREEMENT**

This Agreement will be effective as of the Effective Date and will terminate on the Agreement End Date.

### **4. OBLIGATIONS OF THE PARTIES**

#### **4.1 COMMITMENTS BY THE PROVINCE**

##### **a) Direct, short-term financial assistance**

- i. The Province has committed to provide financial assistance to the City to compensate for the 2018 property tax freeze in the amount of \$1,239,537.
- ii. The Province agrees to provide additional funding to the City in an amount up to \$22,800,000 to be paid over 3 years in accordance with Schedule A.

##### **b) Continued favourable investments in Saint John.**

###### **i. Infrastructure**

Investments and commitments totaling in excess of \$273 million for the Port Saint John modernization; upgrades to the Saint John Regional Hospital; the Safe Clean Drinking Water project; new trades facility at NBCC Saint John; the Greater Saint John Field House; the new barge terminal at Spruce Lake; a new nursing home for Saint John, various highway and road infrastructure improvements; various additional water and wastewater improvements; and infrastructure improvements at the City Market.

###### **ii. Tourism, Arts and Culture**

Launching of the New Brunswick Tourism Growth Strategy in Saint John, together with a \$50 million commitment toward construction of a new provincial museum in uptown Saint John; and additional funds for the development of Fort La Tour and improvements to Imperial Theatre.

iii. Workforce

Ability to receive free child care for low income families as well as supports for the middle class to reduce child care costs with the first phase of this program being targeted to Saint John, affordable housing units; elementary literacy programs; the new Seaside Park Elementary School; funding for home and community care; improved access to physicians including the renewal of the Dalhousie Medicine New Brunswick doctor training program at UNBSJ; an estimated 2,700 subsidized job placements in Saint John over three years through an enhanced Youth Employment Fund and other programs to help youth develop skills, obtain work experience and find jobs; support for new immigrants, including earmarking 25% of immigrants under the Atlantic Immigration Pilot Project for Saint John; Atlantic Workforce Partnership to help build a skilled a workforce and promote apprentice mobility; the New Brunswick Free Tuition Program and Tuition Relief for the Middle Class (TRMC); Living Saint John's efforts to end generational poverty; a \$10 million commitment to Living Saint John; and the restoration of the mental health court.

iv. Innovation

Investment in Enterprise Saint John's Smart and Connected Community Data Strategy to transform the Saint John regional economy; an Open Data Policy to enhance research, science and innovation and facilitate the creation of new businesses and services;

v. Capital

A commitment to support private sector development opportunities in Saint John's core, waterfront and uptown areas.

vi. Agility

Establishment of the Premier's new Regional Minister Office in Saint John provides enhanced ability to pursue opportunities and priorities with Opportunities New Brunswick (ONB) staff co-located with Enterprise Saint John, and new ONB-RSC community economic development executive with a commitment to maintain these supports in place for the duration of the Agreement.

c) Evaluation and longer-term solutions

- i. The Province agrees to establish a working committee with representation from the City for the purpose of evaluating the success of this Agreement as well as to review long term solutions deemed necessary to improve the fiscal condition of the City. The working committee will complete a report with an evaluation of the measures included in the agreement, any subsequent measures announced as part of the Agreement and any additional recommended actions aimed at solving the City's structural deficit to government on or before January 1, 2019.
- ii. The Province agrees to work with the City to look into measures to reduce the City's debt and/or find more favourable terms for the City's debts.
- iii. The Province agrees to give favourable consideration to infrastructure projects that could provide an economic benefit or increase the tax base of the City.

- iv. The Province agrees to apply a preference that regional provincial assets are located in the City as opposed to in surrounding areas.
- v. The Province agrees to encourage private sector investments in the City that could provide an economic benefit or increase the tax base of the City.

#### **4.2 COMMITMENTS BY THE CITY**

- a) The City agrees to minimize impacts on frontline service levels until such time as a solution is implemented.
- b) The City agrees to participate fully on any working committees established by the Province to allow the City and the Province to meet their commitments under this Agreement.
- c) The City agrees to submit reports to the Province in accordance with Schedule B for the term of this agreement.
- d) In the event that the City reports an annual operating surplus in any Fiscal Year of this Agreement, the City may retain up to 1% of the City's budget (the Excess). The Excess, up to total annual assistance paid under this Agreement, shall be repaid to the Province in accordance with Schedule A.
- e) The City shall allow any authorized representative of the Province reasonable access to the City's records and accounts maintained and to carry out the evaluation required for the implementation of this Agreement. The City shall provide all records and accounts as requested by the Province.
- f) The City will inform the Province immediately of any fact or event that will compromise wholly, or in part, this Agreement.

#### **5. DISBURSEMENT OF FUNDS**

- 5.1 Funding to the City will be disbursed in semi-annual payments as indicated in Schedule A so long as the City is compliant with the terms and conditions of this Agreement. The Province reserves the right to withhold any or all payments under this Agreement if the City is non-compliant.
  - a) The Province will retain 25% of the final payment until the City fulfils all of its obligations under this Agreement.
- 5.2 If any Other Financial Assistance is given or is to be given to the City (in respect of the operating costs and/or the delivery of Services) which was not taken into consideration in the entering into of this Agreement, the funding hereunder may be reduced by a corresponding amount.
- 5.3 The Province will not:
  - a) Pay interest for failing to make a payment under this Agreement; nor
  - b) Disburse funds to the City until semi-annual reports as required under Schedule B and an attestation in accordance with Schedule C are received and accepted by the Province.



## **6. AUDIT**

The City agrees to provide the Province with a financial and compliance audit report by July 31 of each year of the Agreement. The City agrees to fund the costs of the audit report and to allow the Province to approve the scope of the audit.

In addition, the City will allow the Province reasonable and timely access to all its documentation, records and accounts and all other relevant information and documentation requested by the Province, or their designated representatives, for the purposes of audit, evaluation, and ensuring compliance with this Agreement.

## **7. DISPUTE RESOLUTION**

- a) The Parties will keep each other informed of any issue that could be contentious.
- b) If a contentious issue arises, representatives of the City and the Province will examine it and will, in good faith and reasonably, attempt to resolve potential disputes as soon as possible and in any event within 30 business days within receipt of notice of such contentious issue. Where the Parties cannot agree on a resolution, the matter will be referred to a mutually agreeable third party for resolution.
- c) Any payments related to any contentious issue or dispute raised by either Party may be suspended by the Province together with the obligations related to such issue, pending resolution.
- d) The Parties agree that nothing in this section will affect, alter or modify the rights of either Party to terminate this Agreement.

## **8. INDEMNIFICATION**

The City will at all times indemnify and save harmless the Province, its officers, servants, employees, or agents, from and against all actions, whether in contract, tort or otherwise, claims and demands, losses, costs, damages, suits or other proceedings by whomsoever brought or prosecuted in any manner based upon or occasioned by any injury to persons, damage to or loss or destruction of property, economic loss or infringement of rights caused by, in connection with or arising directly or indirectly from this Agreement, except to the extent to which such actions, claims, demands, losses, costs, damages, suits or other proceedings relate to the negligence or breach of this Agreement by an officer, servant, employee or agent of the Province in the performance of his or her duties.

## **9. COMMUNICATIONS**

- a) No public announcement of any activity related to this Agreement shall be made by the City without the prior written consent of the Province.
- b) The Parties agree to work co-operatively on any and all Communications Activities relating to this Agreement.
- c) The Parties understand that no decision is final with respect to any contractual obligation until approved by the necessary levels of government.

## **10. GENERAL**

### **10.1 ACCOUNTING PRINCIPLES**

The Accounting Terms will have the meanings assigned to them, all calculations will be made and all financial data to be submitted will be prepared to conform with the budgeting principles established for New Brunswick Municipalities by the Department of Environment and Local Government. The annual audited financial statements will be prepared in accordance with Public Sector Accounting Standards.

### **10.2 SURVIVAL**

The Parties' rights and obligations, which by their nature, extend beyond the termination of this Agreement, will survive any termination of this Agreement.

### **10.3 SEVERABILITY**

If for any reason a provision of this Agreement that is not a fundamental term of this Agreement between the parties is found to be or becomes invalid or unenforceable, in whole or in part, and if both parties agree, it will be deemed to be severable and will be deleted from this Agreement, but all the other terms and conditions of this Agreement will continue to be valid and enforceable.

### **10.4 ASSIGNMENT**

The City will not transfer or assign its rights or obligations under this Agreement without the prior written consent of the Province. Any attempt by the City to assign any of the rights, duties or obligations of this Agreement without the Province's express written consent is void.

### **10.5 AMENDMENTS**

This Agreement may be amended from time to time on written agreement of the Parties.

### **10.6 WAIVER**

A Party may waive any of its rights under this Agreement only in writing. Any tolerance or indulgence demonstrated by the Party will not constitute a waiver.

## **11. OTHER**

11.1 The City will ensure that no current or former public servant or public office holder to whom any post-employment, ethics and conflict of interest legislation, guidelines, codes or policies of the Province applies will derive direct benefit from the Agreement's funding, unless the provision or receipt of such benefits is in compliance with such legislation, guidelines, policies or codes.

11.2 In the event of a breach of any of the terms and conditions of this Agreement by the City, no further disbursements shall be made by the Province and all previous payments shall be returned to the Province within thirty (30) days of written notification to that effect.

## **12. NOTICE**

Any notice or communication authorized or permitted with respect to this Agreement shall be effectively given if delivered in person, sent by mail, including electronic mail; or sent by facsimile (FAX); or prepaid to the address or FAX number, as given in this Agreement.

Any notice or communication required or permitted by this Agreement to be made by the City to The Province shall be provided to:

For the Province:

Environment and Local Government  
Marysville Place  
P.O. Box 6000  
20 McGloin Street  
Fredericton, New Brunswick  
E3A 5T8

Fax: (506) 457-4994

For the City:

The City of Saint John  
City Manager's Office  
P.O. Box 1971  
15 Market Square  
Saint John, New Brunswick  
E2L 4L1

Fax:

Any notice or communication that is made by the Province to the City may be sent to the coordinates indicated above or such other address the City designates in writing to the Province.

Such notice will be deemed to have been received, if sent by mail, when receipt is acknowledged by the other Party; by facsimile, when transmitted and receipt is confirmed; and in person, when delivered.

## **13. GOVERNING LAW**

This Agreement is governed by the laws and regulations applicable in the Province of New Brunswick, including the *Right to Information and Protection of Privacy Act*.

## **14. SUCCESSORS AND ASSIGNS**

This Agreement is binding upon the Parties and their respective successors and assigns.

## SIGNATURES

HER MAJESTY THE QUEEN IN RIGHT  
OF THE PROVINCE OF NEW  
BRUNSWICK

Original signed by:

  
\_\_\_\_\_  
Brian Gallant  
Premier

March 15, 2018  
\_\_\_\_\_  
Date


THE CITY OF SAINT JOHN

Original signed by:

  
\_\_\_\_\_  
City Clerk

February 14, 2018  
\_\_\_\_\_  
Date



  
\_\_\_\_\_  
His Worship Don Darling  
Mayor

February 15/2018  
\_\_\_\_\_  
Date

## **Schedule A – Disbursements**

The Province and the City are committed to work to grow Saint John's economy and tax base in the medium- and long-term to solve the City's structural deficit as quickly as possible. In consideration of the short-term need for financial assistance to the City while this work is completed, the Province will provide assistance in two equal instalments per annum as follows. The Excess, if any, as defined in Section 4.2d) shall be repaid to the Province upon approval of the audited financial statements of the City.

1. In 2018, in the amount of the Anticipated Deficit calculated by the City and included in Schedule D, capped at a maximum of \$3,500,000,
2. In 2019, the City is projecting a deficiency of \$8,900,000 as per Schedule D. This projection was prepared by the City and assumes revenue growth of 1%, expense growth of 2.6% and no carry over of surplus. The Province will contribute an amount equal to the projected deficiency adjusted for projected revenue growth and/or expense savings in excess of the amounts in Schedule D. The Province will also adjust for any surplus carry over. Total assistance from the Province could be \$0 if the City's structural deficit is eliminated and will be capped at a maximum of \$8,900,000 in 2019.
3. In 2020, the City is projecting a deficiency of \$10,400,000 as per Schedule D. This projection was prepared by the City assuming revenue growth of 1%, expense growth of 1.75% and no carry over of surplus. The Province will contribute an amount equal to the projected deficiency adjusted for any projected revenue growth and/or expense savings in excess of the amounts in Schedule D, The Province will also adjust for any surplus carry over. Total assistance from the Province could be \$0 if the City's structural deficit is eliminated and will be capped at a maximum of \$10,400,000 in 2020.

## **SCHEDULE B – Reporting**

Following the Province's acceptance of the Structural Deficit calculation, the City shall submit the following reports to the Province.

### **1. Semi-annual Reports**

**Comparative expense report**, which provides the following, by department:

- Wages and benefits (budget and actual)
- Other expenses (budget and actual)

**Comparative Employment report**, which provides the following by department:

- FTEs (approved positions and actual) with explanations for any variances from the baseline in Schedule E

**Revenue report**, comparing budget to actual


**Semi-annual Reports must be submitted 30 days following the end of the period.**

- 2. Annual audited Financial Statements, including the fund surplus/deficit reconciliation**
- 3. Annual audited employment report**



## SCHEDULE C – Attestation for Reporting

In the matter of entering into the *Funding Agreement* with the Province, I

Jonathan Taylor 

(title) Common Clerk of the City of SAINT JOHN in the Province  
of New Brunswick declares as follows:

I have knowledge of the matters that formed the basis for this Agreement and believe the  
declaration to be true.

Declared at Saint John (municipality) in New Brunswick this  
14 day of February, 20 18.

# Schedule D – Structural Deficit

The table below reflects the Structural Deficit for the three-year period of the Agreement as prepared by the City.

	Budget	Anticipated Deficit	Structural Deficit Forecast	
	2017 Approved	2018 Draft	2019 Forecast	2020 Forecast
<b>Revenues</b>				
Property Taxes	\$ 120,853,074	\$ 121,319,088	\$ 122,532,279	\$ 123,757,602
Provincial Grant	20,225,932	16,603,206	16,603,206	16,603,206
Own Source Revenue	12,525,989	12,048,487	12,103,805	12,164,324
	<b>\$ 153,604,995</b>	<b>\$ 149,970,781</b>	<b>\$ 151,239,290</b>	<b>\$ 152,525,132</b>
<b>Expenses</b>				
Wages and Benefits	88,843,678	90,895,794	93,182,466	95,427,850
Operating Expenses	36,499,688	35,992,645	36,647,135	37,183,169
ABC Funding	12,228,315	12,428,474	12,803,131	12,853,377
Fiscal Charges	16,449,786	16,709,579	17,518,873	17,484,435
	<b>154,021,467</b>	<b>156,026,492</b>	<b>160,151,605</b>	<b>162,948,831</b>
<b>Structural Deficit</b>	<b>\$ (416,472)</b>	<b>\$ (6,055,711)</b>	<b>\$ (8,912,315)</b>	<b>\$ (10,423,699)</b>
<b>Non Recurring Items:</b>				
Carry Over Surplus	\$ 416,472	\$ 1,338,515		
Financial Assistance		1,239,537		
Other Short Term				
<b>(Deficit)</b>	<b>-</b>	<b>\$ (3,477,659)</b>	<b>\$ (8,912,315)</b>	<b>\$ (10,423,699)</b>

Schedule E – City of Saint John Staffing Levels (Baseline)

The table below 2017 Establishment (Permanent Staffing Levels) As Approved by Saint John Common Council and the Saint John Police Commission.

Source: City of Saint John, Human Resources Department

Service Area	Management Professional Staff	Non-Union Employees	Inside Workers	Outside Workers	Firefighters	Police Association	TOTAL
Corporate Services	20	6	5				31
Finance and Administrative Services	16		52	48			116
Growth and Community Development	14		21				35
Transportation and Environmental Services	12		24	150			186
Saint John Fire Department / EMO	12		2		145		159
Saint John Water	15		14	85			114
<b>Total - City of Saint John</b>	<b>89</b>	<b>6</b>	<b>118</b>	<b>283</b>	<b>145</b>		<b>641</b>
Saint John Police Force	13		19			144	176
Public Safety Communications Centre	2		26				28
<b>Total - Saint John Police Commission</b>	<b>15</b>		<b>45</b>			<b>144</b>	<b>204</b>
<b>TOTAL</b>	<b>104</b>	<b>6</b>	<b>163</b>	<b>283</b>	<b>145</b>	<b>144</b>	<b>845</b>

NOTES:

1. In early 2017, the City's Information Technology and GIS Departments moved from Finance and Administrative Services to Corporate Services.
2. Further adjustments were made to the City's permanent Establishment (workforce) in 2017 based on Council / operational priorities and the City's collective agreements.
3. The 2018 Establishment has not yet been finalized by the City Manager or approved by Common Council.
4. 2017 Police and Public Safety Communications Centre workforce information has been provided by the Saint John Police Force.