

**CANADA - CITY OF SAINT JOHN  
DISASTER MITIGATION AND ADAPTATION FUND**

**ULTIMATE RECIPIENT AGREEMENT FOR SAINT JOHN FLOOD MITIGATION  
STRATEGY PROJECT**

This Agreement is made in triplicate this \_\_\_\_ day of \_\_\_\_\_, 2019.

**BETWEEN:**

**THE CITY OF SAINT JOHN**, having its offices at the City Hall Building at 15 Market Square, Saint John, New Brunswick, a body corporate by Royal Charter, confirmed and amended by Acts of the Legislative Assembly of the Province of New Brunswick (hereinafter called the "**Recipient**"),

- and -

**THE POWER COMMISSION OF THE CITY OF SAINT JOHN**, a Commission established by resolution of Common Council of the City of Saint John in 1922, pursuant to the terms of the *New Brunswick Electric Power Act 1920*, 10 George V c. 53, (hereinafter called the "**Ultimate Recipient**"),

individually referred to as a "**Party**" and collectively referred to as the "**Parties**" herein.

**RECITALS**

**WHEREAS** the Recipient has applied for and been approved for funding from Her Majesty the Queen in Right of Canada, as represented by the Minister of Infrastructure and Communities ("**Canada**"), under a fund known as the Disaster Mitigation and Adaptation Fund (the "**Program**");

**AND WHEREAS** the funding allocated to the Recipient under the Program is to support the Saint John Flood Mitigation Strategy Project (the "**Project**") as is more fully described and set out in a separate agreement between the Recipient and Canada, which is attached hereto and marked as Schedule "A" and forms part of this Agreement;

**AND WHEREAS** Schedule "A" obligates the Recipient to enter into a separate agreement with the Ultimate Recipient with such separate agreement containing specific terms required by Canada with respect to the components of the Project to be completed by the Ultimate Recipient, (such components hereinafter referred to as the "**SJE Project**") for which the Ultimate Recipient is fully responsible for completing;

**NOW THEREFORE**, in accordance with the mutual covenants and agreements herein, the Parties hereby agree as follows:

**1. Commitment by the Ultimate Recipient**

The Ultimate Recipient will ensure the SJE Project is completed in a diligent and timely manner, as per the project details outlined in Schedule "B", within the costs and deadlines specified in this Agreement and in accordance with the terms and conditions of this Agreement and, more generally, in accordance with Schedule "C".

## **2. Changes in SJE Project Costs and Funding**

If, at any time during the term of this Agreement, the Ultimate Recipient determines that it will not be possible to complete the SJE Project for any reason, the Ultimate Recipient will immediately notify the Recipient of that determination and Canada may suspend its funding obligation. The Ultimate Recipient will, within thirty (30) business days of a request from the Recipient, provide a summary of the measures that it proposes to remedy the situation. If the Recipient is not satisfied that the measures proposed will be adequate to remedy the situation, then this will constitute an Event of Default under Section 8.1 (Events of Default) and a default may be declared pursuant to Section 8.2 (Declaration of Default).

## **3. The Ultimate Recipient's Representations and Warranties**

The Ultimate Recipient represents and warrants to the Recipient that:

- a) The Ultimate Recipient has the capacity and authority to enter into and execute this Agreement;
- b) The Ultimate Recipient has the capacity and authority to carry out the SJE Project;
- c) The Ultimate Recipient has the requisite power to own the Assets that pertain to the SJE Project;
- d) This Agreement constitutes a legally binding obligation of the Ultimate Recipient, enforceable against it in accordance with its terms and conditions;
- e) All information submitted to the Recipient by the Ultimate Recipient for further submission to Canada, as set out in this Agreement and in Schedule "B" as it relates to the SJE Project is true, accurate, and was prepared in good faith to the best of its ability, skill, and judgment;
- f) Any individual, corporation or organization that the Ultimate Recipient has hired, for payment, who undertakes to speak to or correspond with any employee or other person representing the Recipient or Canada, concerning any matter relating to the contribution under this Agreement or any benefit hereunder and who is required to be registered pursuant to the federal *Lobbying Act*, is registered pursuant to that *Act*;
- g) The Ultimate Recipient has not and will not make a payment or other compensation that is contingent upon or is calculated upon the contribution hereunder or the negotiation of the whole or any part of the terms and conditions of this Agreement to any individual, or corporation or organization with which that individual is engaged in doing business with, who is registered pursuant to the federal *Lobbying Act*; and
- h) There are no actions, suits, investigations or other proceedings pending or, to the knowledge of the Ultimate Recipient, threatened and there is no order, judgment or decree of any court or governmental agency which could materially and adversely affect the Ultimate Recipient's ability to carry out the activities contemplated by this Agreement and in Schedule "B" The Ultimate Recipient will inform the Recipient immediately if any such action or proceedings are threatened or brought during the term of this Agreement.

## **4. Contract Procedures**

### **4.1 AWARDING OF CONTRACTS**

- a) The Ultimate Recipient will ensure that Contracts will be awarded in a way that is fair, transparent, competitive and consistent with value-for-money principles or in a manner otherwise acceptable to the Recipient and Canada, and if applicable, in accordance with the Canadian Free Trade Agreement and international trade agreements.
- b) If the Recipient or Canada determines that the Ultimate Recipient has awarded a Contract in a manner that is not in compliance with the foregoing, upon notification to the Ultimate Recipient, the Recipient or Canada may consider the expenditures associated with the Contract to be ineligible.

### **4.2 CONTRACT PROVISIONS**

The Ultimate Recipient will ensure that all Contracts are consistent with, and incorporate, the relevant provisions of this Agreement and Schedule "A". More specifically but without limiting the generality of the foregoing, the Ultimate Recipient agrees to include terms and conditions in all Contracts to ensure that:

- a) Any Third Party will keep proper and accurate financial accounts and records, including but not limited to its Contracts, invoices, statements, receipts, and vouchers, in respect of the Project for at least six (6) years after the Agreement End Date, and that the Ultimate Recipient, the Recipient or Canada has the contractual right to audit them;
- b) All applicable labour, environmental, and human rights legislation is respected; and
- c) Canada, the Auditor General of Canada, and their designated representatives, to the extent permitted by law, as well as the Recipient, will at all times be permitted to inspect the terms and conditions of the Contract and any records and accounts respecting the SJE Project and will have reasonable and timely access to the SJE Project sites and to any documentation relevant for the purpose of audit.

## **5. Audit**

- a) The Ultimate Recipient agrees to inform the Recipient of any audit that has been conducted on the use of contribution funding under this Agreement, provide the Recipient with all relevant audit reports, and ensure that prompt and timely corrective action is taken in response to any audit findings and recommendations. The Ultimate Recipient will submit to the Recipient in writing as soon as possible, but no later than sixty (60) days following receiving it, a report on follow-up actions taken to address recommendations and results of the audit.
- b) The Recipient or Canada may, at its discretion, conduct an Ultimate Recipient audit related to this Agreement during the term of this Agreement and up to two years after the Agreement End Date, in accordance with the Canadian Auditing Standards and Section 20.2 (Accounting Principles). All audits conducted by the Recipient or Canada will be at the Recipient's or Canada's expense, as applicable.
- c) The Ultimate Recipient will ensure proper and accurate financial accounts and records are kept, including but not limited to its Contracts, invoices, statements, receipts, and vouchers in respect to the SJE Project for at least six (6) years after the Agreement End Date.

## **6. Evaluation**

The Ultimate Recipient agrees to provide SJE Project-related information to the Recipient and/or Canada during and following the termination of the Agreement in order for Canada to conduct any evaluation of the performance of the Program. All evaluation results will be made available to the public, subject to all applicable laws and policy requirements.

## **7. Access**

The Ultimate Recipient will provide the Recipient and Canada and its designated representatives with reasonable and timely access to the SJE Project sites, facilities, and any documentation for the purposes of audit, inspection, monitoring, evaluation, and ensuring compliance with this Agreement.

## **8. Default**

### ***8.1 EVENTS OF DEFAULT***

The following events constitute “Events of Default” under this Agreement:

- a) The Ultimate Recipient has not complied with one or more of the terms and conditions of this Agreement;
- b) The Ultimate Recipient has not completed the SJE Project in accordance with the terms and conditions of this Agreement;
- c) The Ultimate Recipient has submitted false or misleading information to the Recipient or made a false or misleading representation in respect of the SJE Project or in this Agreement, except for an error in good faith, demonstration of which is incumbent on the Ultimate Recipient, to the Recipient’s satisfaction; or
- d) The Ultimate Recipient has neglected or failed to pay the Recipient any amount due in accordance with this Agreement or as otherwise anticipated by separate agreement or arrangement.

### ***8.2 DECLARATION OF DEFAULT***

The Recipient may declare default if:

- a) One or more of the Events of Default occurs;
- b) The Recipient gave notice to the Ultimate Recipient of the event which in the Recipient or Canada’s opinion constitutes an Event of Default; and
- c) The Ultimate Recipient has failed, within thirty (30) business days of receipt of the notice, either to remedy the Event of Default or to notify and demonstrate, to the satisfaction of the Recipient or Canada, that it has taken such steps as are necessary to remedy the Event of Default.

### ***8.3 REMEDIES ON DEFAULT***

In the event that the Recipient or Canada declares a default under Section 8.2 (Declaration of Default), the Recipient or Canada may exercise one or more of the following remedies, without limiting any remedy available to it by law:

- a) Suspend any obligation by the Recipient or Canada to contribute or continue to contribute funding to the SJE Project, including any obligation to pay an amount owing prior to the date of such suspension;

- b) Terminate any obligation of the Recipient or Canada to contribute or continue to contribute funding to the SJE Project, including any obligation to pay any amount owing prior to the date of such termination;
- c) Require the Ultimate Recipient to reimburse the Recipient or Canada, as the case may be, all or part of the contribution paid to the Ultimate Recipient; and
- d) Terminate the Agreement.

## **9. Limitation of Liability and Indemnification**

### **9.1 DEFINITION OF PERSON**

In this section, "Person" includes, without limitation, a person, the Ultimate Recipient, a Third Party, a corporation, or any other legal entity, and their officers, servants, employees or agents.

### **9.2 LIMITATION OF LIABILITY**

In no event will the Recipient or Canada, or their officers, servants, employees or agents be held liable for any damages in contract, tort (including negligence) or otherwise, for:

- a) Any injury to any Person, including, but not limited to, death, economic loss or infringement of rights;
- b) Any damage to, loss of, or destruction of property of any Person; or
- c) Any obligation of any Person, including, but not limited to, any obligation arising from a loan, capital lease or other long term obligation;

in relation to this Agreement or, more generally, the Ultimate Recipient's execution of the SJE Project.

### **9.3 INDEMNIFICATION**

The Ultimate Recipient will at all times indemnify and save harmless the Recipient and Canada, and their officers, servants, employees or agents, from and against all actions, claims, demands, losses, costs, damages, suits or other proceedings, whether in contract, tort (including negligence) or otherwise, by whomsoever brought or prosecuted in any manner based upon or occasioned by:

- a) Any injury to any Person, including, but not limited to, death, economic loss or any infringement of rights;
- b) Any damage to or loss or destruction of property of any Person; or
- c) Any obligation of any Person, including, but not limited to, any obligation arising from a loan, capital lease or other long term obligation

in relation to this Agreement or the SJE Project, except to the extent to which such actions, claims, demands, losses, costs, damages, suits or other proceedings are caused by the negligence or breach of the Agreement by an officer, servant, employee or agent of the Recipient or Canada in the performance of his or her duties.

## **10. Disposal of Assets**

- a) Unless otherwise agreed to by the Parties, the Ultimate Recipient retains title to and ownership of the Assets for which the Ultimate Recipient is responsible in accordance with Schedule B (Project Details) for the Asset Disposal Period.

- b) Notwithstanding any other provision of this Agreement, the Ultimate Recipient will preserve, maintain and use any Assets for which the Ultimate Recipient is responsible for the purposes of the SJE Project.
- c) The Ultimate Recipient undertakes to notify Canada in advance in writing at any time within the Asset Disposal Period, if the Ultimate Recipient sells, leases, encumbers or otherwise disposes of, directly or indirectly, any Asset excluding real property acquired with Canada's contribution other than to Canada, the Recipient, a municipal or regional government within the Recipient, or with Canada's consent, and the Ultimate Recipient will reimburse Canada, at Canada's discretion, in whole or in part, any amount of funds contributed by Canada to the Asset under this Agreement.

## **11. General**

### **11.1 SURVIVAL**

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

### **11.2 ACCOUNTING PRINCIPLES**

All accounting terms will have the meanings assigned to them, all calculations will be made and all financial data to be submitted will be prepared in accordance with the Generally Accepted Accounting Principles (GAAP) in effect in Canada as defined in the Chartered Professional Accountants (CPA) Canada Handbook – Accounting.

### **11.3 DEBTS DUE TO THE FEDERAL CROWN OR RECIPIENT**

Any amount owed to the Recipient or Canada under this Agreement by the Ultimate Recipient will constitute a debt due to the Recipient or the Crown, as the case may be, which the Ultimate Recipient will reimburse the Recipient or Canada forthwith on demand.

### **11.4 INTEREST ON DEBTS DUE TO THE FEDERAL CROWN OR RECIPIENT**

Debts due to the Recipient or the Crown by the Ultimate Recipient will accrue interest in accordance with the federal *Interest and Administrative Charges Regulations*.

### **11.5 SET-OFF**

Any debt due to the Recipient or the Crown by the Ultimate Recipient may be set-off against any amounts payable under this Agreement or under Schedule "A".

### **11.6 MEMBERS OF THE HOUSE OF COMMONS AND SENATE**

No member of the House of Commons, the Senate of Canada or the Common Council of the Recipient will be admitted to any share or part of this Agreement, or to any benefit arising from it, that is not otherwise available to the general public. The Ultimate Recipient will promptly inform the Recipient or Canada should it become aware of the existence of any such situation.

### **11.7 CONFLICT OF INTEREST**

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 Canada or the Recipient applies will derive direct benefit from this Agreement unless the provision or receipt of such benefits is in compliance with such legislation, guidelines, policies or codes. The Ultimate Recipient will promptly

inform the Recipient and Canada should it become aware of the existence of any such situation.

**11.8 NO AGENCY, PARTNERSHIP, JOINT VENTURE, ETC.**

- a) No provision of this Agreement and no action by the Parties will establish or be deemed to establish a partnership, joint venture, principal-agent relationship or employer-employee relationship in any way or for any purpose whatsoever between Canada and/or the Recipient and the Ultimate Recipient or between Canada and/or the Recipient and a Third Party.
- b) The Ultimate Recipient will not represent itself, including in any agreement with a Third Party, as a partner, employee or agent of the Recipient or Canada.

**11.9 NO AUTHORITY TO REPRESENT**

Nothing in this Agreement is to be construed as authorizing any person, including a Third Party, to contract for or to incur any obligation on behalf of the Recipient or Canada or to act as an agent for the Recipient or Canada. The Ultimate Recipient will take the necessary action to ensure that any Contract between the Ultimate Recipient and any Third Party contains a provision to that effect.

**11.10 ASSIGNMENT**

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

**11.11 COUNTERPART SIGNATURE**

This Agreement may be signed in counterpart, and the signed copies will, when attached, constitute an original agreement.

**11.12 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.

**11.13 AMENDMENTS**

This Agreement, including its schedules, can only be amended in writing by the Parties.

**11.14 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.

**11.15 NOTICE**

Any notice provided for under this Agreement may be delivered in person, sent by mail addressed to:

for Canada:

ASSISTANT DEPUTY MINISTER  
PROGRAM OPERATIONS BRANCH  
INFRASTRUCTURE CANADA

1100 - 180 Kent Street  
Ottawa, Ontario  
K1P 0B6

for the Recipient:

Mr. Jonathan Taylor  
Common Clerk, The City of Saint John  
15 Market Square, City Hall, 9<sup>th</sup> Floor  
P.O. Box 1971  
City of Saint John, New Brunswick  
E2L 4L1

or to such other address or facsimile number or email or addressed to such other person as the Recipient or Canada may, from time to time, designate in writing to the Ultimate Recipient; and

for the Ultimate Recipient:

Ray Robinson  
Chief Executive Officer, The Power Commission of the City of Saint John  
325 Simms Street  
Saint John, New Brunswick  
E2M 3L6

or such other address or facsimile number or email or addressed to such other person as the Ultimate Recipient may, from time to time, designate in writing to the Recipient or Canada.

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

#### **11.16 COMPLIANCE WITH LAWS**

The Ultimate Recipient will comply with all applicable laws and regulations and all requirements of regulatory bodies having jurisdiction over the subject matter of the SJE Project.

#### **11.17 GOVERNING LAW**

This Agreement is governed by the laws applicable in the Province of the Recipient.

#### **11.18 SUCCESSORS AND ASSIGNS**

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

#### **11.19 INTELLECTUAL PROPERTY**

- (a) All intellectual property that arises in the course of the SJE Project will vest in the Ultimate Recipient.
- (b) The Ultimate Recipient will obtain the necessary authorizations, as needed, for the implementation of the SJE Project, from third parties who may own the intellectual property rights or other rights in respect of the SJE Project. Neither the Recipient nor Canada will assume any liability in respect of claims from any third party in relation to such rights and to the Agreement.



## **11.20 INTERPRETATION**

Capitalized terms used in this Agreement but not otherwise defined in this Agreement shall have the meanings given to them in Schedule "A".

## **12. Additional General Provision**

- (a) Notwithstanding the foregoing provisions, the Ultimate Recipient acknowledges and agrees that its obligations respecting the SJE Project will be discharged fully in compliance with the terms outlined in Schedule "A" hereto and in any document or submissions that the Ultimate Recipient participated in which led to the Recipient's successful application for funding under the Program. As such, the Ultimate Recipient agrees to comply in a timely fashion respecting any requests for information or requirements of the Recipient, or Canada, as determined by the Recipient or Canada, and acknowledges and agrees that it is fully responsible and, accordingly, fully liable for the SJE Project. The Ultimate Recipient, in view of this acknowledgment further acknowledges and agrees that any costs or liabilities associated in any way whatsoever with the SJE Project shall be borne solely by the Ultimate Recipient and that the Ultimate Recipient shall indemnify and hold the Recipient harmless in every respect for any costs or liabilities of any kind that may be visited upon the Recipient by reason of any actions or inaction whatsoever of the Ultimate Recipient with the only matter for determination by a Court being whether the cost or liability in question was indeed occasioned in respect of the SJE Project.
- (b) The Ultimate Recipient acknowledges that funding eligibility for the three components of the Project under the Program is dependent upon meeting the minimum combined expenditure threshold of \$20,000,000 and further acknowledges that without the SJE Project that the aforementioned threshold would not be satisfied. The Ultimate Recipient also acknowledges that Schedule "A" stipulates that a range of penalties may be imposed by Canada against the Recipient should the aforementioned threshold not be met, including the revocation or clawback of funding for any or all components of the Project. As a consequence, and in full recognition of these circumstances, the Ultimate Recipient acknowledges and agrees that it shall make the Recipient whole from a financial perspective if it is the case that the revocation or clawback of funding to the Recipient of any funding for the Project under the Program can be demonstrated to have been occasioned by the action or inaction of the Ultimate Recipient and the Recipient agrees that in the event Canada revokes or claws back funding for the Project for reasons unrelated to the SJE Project, the Recipient will continue to support Canada fully funding the SJE Project and will not revoke or clawback funds from the SJE Project to be used to support other components of the Project.
- (c) For certainty, the Recipient agrees that the funds allocated to the Ultimate Recipient for the SJE Project shall not be used by the Recipient for any other components of the Project unless and until the SJE Project has been completed.

## **13. Environmental Assessment**

Should federal environmental or impact assessment legislation be found to have any application to the SJE Project, the Ultimate Recipient:

- a) agrees that construction or any other physical activity that is carried out in relation to the SJE Project, including site preparation, will not be undertaken or will be suspended and no funds or additional funds will be payable by Canada to the Recipient for the SJE Project unless and until the requirements under the applicable federal environmental or impact assessment legislation are met and continue to be met by the Ultimate Recipient:

- (i) where the SJE Project is a “designated project” under the applicable federal environmental or impact assessment legislation,
    - 1. a decision pursuant to that legislation is made indicating that no environmental or impact assessment is required for the SJE Project; or
    - 2. a decision statement in respect of the SJE Project is issued to the Recipient indicating that:
      - a. the SJE Project is not likely to cause significant adverse environmental effects;
      - b. the SJE Project is likely to cause significant adverse environmental effects that the Governor in Council decides are justified in the circumstances, which decision statement may contain conditions in respect of the Project; or
      - c. the adverse effects with respect to the impact assessment of the SJE Project are in the public interest,
  - b) where the SJE Project is a “project” under the applicable federal environmental or impact assessment legislation, a determination that the carrying out of the SJE Project:
    - 1. is not likely to cause significant adverse environmental effects; or
    - 2. is likely to cause significant adverse environmental effects and the Governor in Council decides that those effects are justified in the circumstances,
  - c) the requirements under any applicable agreements between Canada and Aboriginal groups.
2. The Ultimate Recipient will comply with, to the satisfaction of Canada and at the Ultimate Recipient’s own expense, all conditions related to the SJE Project referred to in Section 20.1. (Environmental Assessment) of Schedule “A” and will ensure access to Project sites, facilities, and documentation in accordance with Section 13 (Access) of Schedule “A”.
  3. If, as a result of changes to the SJE Project or otherwise, Canada is of the opinion that an environmental or impact assessment or a subsequent determination is required for the Project, the Ultimate Recipient agrees that construction of the SJE Project or any other physical activity that is carried out in relation to the SJE Project, including site preparation, will not be undertaken or will be suspended and no funds or additional funds will become or will be payable by Canada to the Recipient for the SJE Project unless and until:
    - a) where the SJE Project is “designated project” under the applicable federal environmental or impact assessment legislation,
      - i. a decision pursuant to that legislation is made indicating that no environmental assessment is required for the SJE Project; or
      - ii. a decision statement in respect of the SJE Project is issued to the Recipient indicating that:
        1. the SJE Project is not likely to cause significant adverse environmental effects;
        2. the SJE Project is likely to cause significant adverse environmental effects that the Governor in Council decides

are justified in the circumstances, which decision statement may contain conditions in respect of the SJE Project; or

3. the adverse effects with respect to the impact assessment of the SJE Project are in the public interest,
- b) where the SJE Project is a “project” under the applicable federal environmental or impact assessment legislation and a determination is made pursuant to that legislation stating that the carrying out of the SJE Project:
    - i. is not likely to cause significant adverse environmental effects; or
    - ii. is likely to cause significant adverse environmental effects and the Governor in Council decides that those effects are justified in the circumstances,
  - c) the requirements under any applicable agreements between Canada and Aboriginal groups, are met and continue to be met.

#### **14. ABORIGINAL CONSULTATIONS**

Should there be any legal duty on the part of the Ultimate Recipient to consult or to accommodate Aboriginal groups with respect to the SJE Project or should other federal consultation requirements be found to have any application to the SJE Project, the Ultimate Recipient agrees that:

No site preparation, vegetation removal or construction will occur for a SJE Project and Canada has no obligation to pay any Eligible Expenditures that are capital costs, as determined by Canada, until Canada is satisfied that any legal duty to consult, and where appropriate, to accommodate Aboriginal groups or other federal consultation requirements, have been met and continues to be met. If required, Canada must be satisfied that:

- a) Aboriginal groups have been notified and, if applicable, consulted;
- b) If applicable, a summary of consultation or engagement activities has been provided, including a list of Aboriginal groups consulted, concerns raised, and how each of the concerns have been addressed, or if not addressed, an explanation as to why not;
- c) Accommodation measures, where appropriate, are being carried out by the Ultimate Recipient and these costs may be considered Eligible Expenditures; and
- d) Any other information has been provided that Canada may deem appropriate.

[signature page to follow]

**IN WITNESS WHEREOF** the parties hereto have caused these presents to be executed by their proper officers and The City of Saint John and The Power Commission of The City of Saint John, have caused their corporate seals to be affixed as of the day and year first above written.

**SIGNED, SEALED & DELIVERED**

In the presence of:

)  
)  
) **THE CITY OF SAINT JOHN**  
)  
)  
)  
) \_\_\_\_\_  
) Mayor  
)  
) \_\_\_\_\_  
) Common Clerk  
)  
) Common Council Resolution:  
) \_\_\_\_\_, 2019  
)  
)  
) **THE POWER COMMISSION OF**  
) **THE CITY OF SAINT JOHN**  
)  
) Per:  
)  
) \_\_\_\_\_  
) Raymond R. Robinson, President and  
) CEO  
)  
) \_\_\_\_\_  
) [INSERT], Chairman of the  
) Commission  
)

**Schedule “A”**

CANADA – CITY OF SAINT JOHN

Disaster Mitigation and Adaption Fund

Agreement for Saint John Flood Mitigation Strategy Project

## **SCHEDULE “B”**

Details of THE SAINT JOHN FLOOD MITIGATION STRATEGY PROJECT (the “Project”)

B1. Project Description to be carried out by the Recipient :

SeaWall Refurbishment:

By reinforcing the SeaWall, the City is avoiding a risk that can be catastrophic whereby the SeaWall protects current development that if the SeaWall were not providing a barrier could cause significant damage and safety concerns.

Located in the cultural and economic heart of down-town Saint John, and refurbishing the SeaWall will ensure the continued use of this prime property in the cultural and economic fabric of the City of saint John.

Detailed Description:

-Design of the SeaWall refurbishment will include raising the top of the wall to accommodate sea level rise, higher storm surges and higher wave action.

Raise or Replace Pumping Stations:

Raising or replace pumping stations (nine wastewater pumping stations and one water pumping station) above flood levels will mitigate the risk of damage caused by flooding, assist in providing continued critical services and will help mitigate the risks associated to the environment due to wastewater contamination.

Detailed Description:

- The mitigation of flood risks of the 9 wastewater pumping stations will reduce the likelihood of uncontrolled sewage overflows from these stations to natural watercourses during flood events.

- GHG reduction will be achieved as the pumps and motors specified for the upgraded replacement project will be significantly more efficient than the existing components and therefore will require less power during operation. This upgrade to the pumping stations will result in annual reduction of 491 tonnes of CO<sub>2</sub>.

- Raising or replacement of pumping stations will have a positive effect on the environment as raw sewage releases will be reduced or eliminated therefore reducing environmental contamination.

- The Musquash WPS work is an essential source of process water for the local power plant and industrial facilities that require this water to maintain production.

- Specific measures that will be adopted to improve the resilience of the pumping stations to flooding includes:

1. Relocate or raise the structure, or vulnerable equipment, above flood elevation.
2. Implement flood warning systems and water level measurement equipment to monitor water levels in advance of peak flood, where applicable.
3. Include backup generator connections within the flood resilient design.
4. Create sewer separation plans to reduce inflow into sanitary sewers.
5. Investigate and monitor the effectiveness of flap gate and backflow prevention techniques.
6. Ensure safe accessibility to station during flooding and to refuel generators.

Details of the SJE Project to be carried out by the Ultimate Recipient

## Relocation of the Electrical Substations:

The relocation of critical waterfront electrical utility infrastructure is fundamental to the resiliency of the electrical system serving Saint John's core urban neighborhoods. Relocation to a site 12m above the original site and 465m inland is the best option as this will remove 100% of the risk of sea level rise along with the risk of future storm events causing flooding, wave action and salt sprays which could cause disruption of essential electrical services to 25% of the regional workforce. In addition transformer oil released in an incident would immediately enter the harbour and the Saint John River. If the event happened in the winter months the 7,500 residents and 1,150 businesses would be displaced for up to 6 months and the freezing water piping in the uptown area would cause substantial damage.

### Detailed Description:

- The replacement of two existing electrical substations with a single new electrical substation will increase the reliability for the utility and the City.
- Decommissioning the current substations will remove the last of the asbestos breakers and mercury switches in the distribution system.
- GHG reduction and environmental value is significant. Over 70% reduction in GHG and the removal of over 60,000L of transformer oil from the risk of spilling into the harbour, river and indigenous fishing grounds.
- Existing substation decommissioning on harbour front will free the land up for the City's Waterfront Renewal Plan.
- Specific measures that will be adopted to improve the resilience of the substation to flooding includes:
  1. The substation will be moved to a new site 16m above sea level and 465m from the water front.
  2. All oil filled transformers will have secondary containment of 130% of oil volume.
  3. Real Time Monitoring 24/7 of all critical equipment with warning systems on critical equipment.
  4. Remote operations of substation-ability to operate entire substation remotely by off-site Distribution Control Centre for normal and emergency purposes.
  5. Ability to tie into another local substation for backup.

### B1.1 Project Objective:

Describe the Project's overall objectives.

The effects of climate change (increased frequency and severity of heavy rainfall and snow melt, sea level rise, increased wind, wave action and salt spray, as well as increased magnitude and frequency of storm surges) have resulted and are projected to further increase the risk of flooding and failure of the infrastructure included as part of this Project (harbour front seawall, 9 wastewater pumping stations, 1 water pumping station) including the SJE Project (relocation of 2 electrical substations).

The Project is intended to mitigate the risk and increase the resiliency of the critical infrastructure. The 3 components listed in this Project have been determined based on vulnerability risk assessment of where the biggest risk is associated with the effects of climate change due to flooding. Based on the infrastructure vulnerability and options available the approach has been determined as either, move to higher ground, provide further protection/barrier from water and any other design requirements to assist in avoiding future damages and keeping the City safe.

B1.2 Expected Results at Project completion (by asset or asset system):

(For the purposes of the following table, the following 3 Project components will be referred to by a letter : SeaWall Refurbishment (a); Raise or Replace Pumping Stations (b); the SJE Project - New Electrical Substation (c).)

Expected Outputs and immediate Outcome(s)	Indicators	Baseline	Target	Actual Results (info to be included in final report)
Increased structural capacity to adapt to climate change impacts, disasters triggered by natural hazards, and extreme weather events	Number of newly built or improved infrastructure assets	a) 1 b) 10 c) 1	a) 1 b) 10 c) 1	
	Expected lifecycle of newly built or improved infrastructure assets (years)	a) 0 (The structure has been previously assessed as being in need of significant structural upgrades  b) Pumping Stations being replaced- 0 years /Pumping stations being raised- 16 years  c) 5 years	a) 50 years b) 30 years c) 50-60 years	
	Performance of newly built or improved infrastructure assets (ex. m3)	a) 5.58m is designed to withstand a 1 in 100 year storm (no allowance for sea level rise)  b) Current Average Pumping Capacity: (wastewater)- 16 liters/sec  (water)- 1540	a) 6.5m designed to withstand an estimated 1 in 150 year storm event under current sea levels, or a 1 in 100 year event accounting for sea level rise  b) Future Average Pumping Capacity: (wastewater)- 19 liters/sec (to be	



		liters/sec c) 4m above sea level	confirmed during detailed design)  (water)- 1577 liters/sec (to be confirmed during detailed design)  c) +16m above sea level	
Expected intermediate Outcome(s)	Indicators	Baseline	Target	Actual Results (info to be included in final report)
Increased ability of communities to adapt and withstand climate change impacts, disasters triggered by natural hazards, and extreme weather events	Percentage of directly affected people by hazard	Greater Than 15%	Less Than 5%	
	Percentage of local economic losses per hazard	Greater than 5%	Less Than 2%	
	Percentage of population without essential services during hazard	Greater than 20%	Less Than 2%	
	Number of missing people/lives	Less than 10	Less than 10	
Expected ultimate Outcome(s)	Indicators	Baseline	Target	Actual Results (info to be included in final report)
Increased economic, environmental and social resilience	Long-term savings on socio- economic damages during the asset life cycle	0	Damages per year: \$5.88 million  Year remaining: 30- 60 years depending on asset.  Total minimum savings:\$176.4 million	

Minimum Federal Requirements	<p>All projects under the DMAF must meet the following federal requirements:</p> <p>Meeting or exceeding the applicable energy efficiency standards for buildings outlined in the <i>Pan-Canadian Framework (PCF) on Clean Growth and Climate Change</i>.</p> <p>Meeting or exceeding the requirement of the highest published accessibility standard in a jurisdiction, defined as the requirements in the Canadian Standards Association Technical Standard Accessible Design for the Built Environment (CAN/CSA B651-12 or newer), in addition to applicable provincial or territorial building codes, and relevant municipal by-laws.</p>
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B.1.3 Boundaries:

		Project Component Mid-Points	
Project Component	Midpoint km	CSRS-UTM-20N Lat/Long	
		Latitude (N)	Longitude (W)
1 (SeaWall)	See below	See below	See below
2 (Pumping Stations)	See below	See below	See below
3 (Electrical Substations)	See below	See below	See below

Note: 45° 14' 39.56" N and 66° 05' 15.58" W to 15° 19' 31.41" N and 66° 04' 51.88" W

The City of Saint John has approximately 97,600m of coastline, that are potentially vulnerable to coastal flooding.

(Include map(s) here, if applicable)

## B2. Project Components and Cashflow

Project Components	Estimated Expenditures			Forecast						
	Estimated Total Expenditures	Estimated Eligible Expenditures	Estimated Contribution by Canada	Forecast of Estimated Contribution by Canada by Fiscal Year						
				2019/20	2020/21	2021/22	2022/23	2023/24	2024/25	2025/26
Project Cost	\$29,790,184	\$29,790,184	\$11,916,074	\$2,360,718	\$4,731,435	\$3,659,921	\$248,000	\$340,000	\$352,000	\$224,000
Total	\$29,790,184	\$29,790,184	\$11,916,074	\$2,360,718	\$4,731,435	\$3,659,921	\$248,000	\$340,000	\$352,000	\$224,000

B3. Total Financial Assistance:

Recipient: \$11,029,805

Ultimate Recipient (Saint John Energy): \$6,844,305

Canada: \$11,916,074

Other contributors: \$0

## **Schedule “C”**

### **SCHEDULE C – COMMUNICATIONS PROTOCOL**

#### ***PURPOSE***

This Communications Protocol outlines the roles and responsibilities of each of the Parties to this Agreement with respect to communications activities related to the funded Project.

This Communications Protocol will guide all communications activity planning, development and implementation to ensure clear, consistent and coordinated communications to the Canadian public.

The provisions of this Communications Protocol apply to all communications activities related to this Agreement including any Projects funded under this Agreement.

Communications activities may include, but are not limited to, public or media events, news releases, reports, web and social media products or postings, blogs, project signs, digital signs, publications, success stories and vignettes, photo compilations, videos, advertising campaigns, awareness campaigns, editorials, and multi-media products.

#### ***GUIDING PRINCIPLES***

The Parties recognize the importance of managing the delivery of coherent communications activities based on the principle of transparent and open discussion and collaboration.

Communications activities undertaken through this Protocol should ensure that Canadians are informed of infrastructure investments made to help improve their quality of life and that they receive consistent information about the funded Project and its benefits.

The communication activities undertaken by Canada the Recipient and the Ultimate Recipient should recognize the funding of all contributors to the Project.

The Ultimate Recipient’s public acknowledgement of financial assistance received from Canada is a condition of funding under this Agreement.

The Ultimate Recipient will address any deficiencies and/or corrective actions identified by Canada or by the Oversight Committee.

#### ***GOVERNANCE***

The Parties will designate communications contacts and form a communications subcommittee that will be responsible for preparing the Project’s communications plan, overseeing its implementation and reporting on its results to the Oversight Committee.

#### ***PROGRAM COMMUNICATIONS***

Canada retains the right to meet its obligations to communicate information to Canadians about the Program and the use of funding through its own communications products and activities.

Canada, the Recipient and the Ultimate Recipient may also include general program messaging and an overview of this Project as an

example in their own communications products and activities. The Party undertaking these activities will recognize the funding of the Parties.

Canada and the Recipient agree that they will not unreasonably restrict the other Party or other funding contributors from using, for their own purposes, public communications products related to the Project that were prepared collectively or individually by the Parties, and if web-based, from linking to them.

Canada, the Recipient and the Ultimate Recipient will ensure that they:

- a) Will work together with respect to Joint Communications about the Project.
- b) Joint Communications related to Project funded under this Agreement should not occur without the prior knowledge and agreement of each of the Parties.
- c) All Joint Communications material will be approved by Canada and the Recipient, and will recognize the funding of each of the Parties.
- d) Each of the Parties may request Joint Communications to communicate to Canadians about the progress or completion of Projects. The requestor will provide at least fifteen (15) business days' notice to the other Parties. If the Communications Activity is an event, it will take place at a mutually agreed date and location.
- e) The requestor of the Joint Communications will provide an equal opportunity for the other Parties to participate and choose their own designated representative in the case of an event.
- f) As Canada and the Recipient have an obligation to communicate in English and French, Communications products related to events must be bilingual and include the Canada word mark and the other Party's logo. In such cases, Canada will provide the translation services and final approval of products.
- g) The conduct of all Joint Communications will follow the *Table of Precedence for Canada*.

Media events include, but are not limited to, news conferences, public announcements, official events or ceremonies, and news releases.

The Ultimate Recipient agrees to collaborate with Canada and the Recipient on communications activities and products including, but not limited to, Project success stories, vignettes, and multi-media products.

### **INDIVIDUAL COMMUNICATIONS**

The Ultimate Recipient will ensure that:

- a) where a website or webpage is created to promote or communicate progress on a funded Project or Projects, it must recognize federal funding through the use of a digital sign or through the use of the Canada wordmark and the following wording, "This project is funded in part by the Government of Canada." The Canada wordmark or digital sign must link to Infrastructure Canada's website, at [www.infrastructure.gc.ca](http://www.infrastructure.gc.ca). The guidelines for how this recognition is to appear and language requirements are published on Infrastructure Canada's website (<http://www.infrastructure.gc.ca/pub/signage-panneaux/intro-eng.html>).

- b) Canada will be provided with a minimum of one photograph of the Project construction in progress and, at minimum, one photograph of the completed Project, for use in social media and other digital individual Communications Activities.
- c) the Ultimate Recipient will be required to send a minimum of one photograph to each of the Parties of the construction in progress, or of the completed project, for use in social media and other digital individual communications activities. Sending the photos will constitute permission to use and transfer of copyright. Photographs are to be sent to [INFC.photos@canada.ca](mailto:INFC.photos@canada.ca) along with Project name and location.

### **OPERATIONAL COMMUNICATIONS**

The Ultimate Recipient is solely responsible for operational communications with respect to the Project, including, but not limited to, calls for tender, construction, and public safety notices which relate to its components of the Project.

Operational communications will include the following statement: “This project is funded in part by the Government of Canada”. Operational communications as described above are not subject to the federal official languages policy.

Canada, the Recipient and the Ultimate Recipient will share information promptly with the other Party should significant media inquiries be received or if major stakeholder issues relating to the Project arise.

### **SIGNAGE**

Unless otherwise agreed upon by Canada, the Recipient and the Ultimate Recipient will produce and install a sign to recognize contributors' funding at each of its components of the Project site in accordance with current federal signage guidelines. The sign's design, content, and installation guidelines are provided by Canada (<http://www.infrastructure.gc.ca/pub/signage-panneaux/intro-eng.html>).

Where the Ultimate Recipient decides to install a permanent plaque or other suitable marker with respect to the Project, it must recognize the federal contribution and be approved by Canada.

The Ultimate Recipient will ensure that signs are installed at the Project site(s) at least one (1) month prior to the start of construction, be visible for the duration of the Project, and remain in place until one (1) month after construction is completed and the infrastructure is fully operational or opened for public use.

The Recipient will ensure that signs are installed in a prominent and visible location that takes into consideration pedestrian and traffic safety and visibility.

Sign installations shall be reported to the Recipient and Canada as per subsection 9.1 b) (Progress Report) of Schedule “A”.

### ***ADVERTISING CAMPAIGNS***

Recognizing that advertising can be an effective means of communicating with the public, Canada, the Recipient and the Ultimate Recipient may, at their own cost, organize an advertising or public information campaign related to the Program or the funded Project. However, such a campaign must respect the provisions of this Agreement. In the event of such a campaign, each Party agrees to inform the other Party of its intention, no less than twenty-one (21) business days prior to the campaign launch.



**PROVINCE OF NEW BRUNSWICK**

**COUNTY OF SAINT JOHN**

I, **Raymond R. Robinson**, of the City of Saint John and Province of New Brunswick, **MAKE OATH AND SAY:**

1. THAT I am the President and CEO of The Power Commission of The City of Saint John (the "Commission"), and am authorized to make this affidavit and have personal knowledge of the matters hereinafter deposed to.
2. That the Commission does not have a corporate seal.
3. THAT the signature "[INSERT]" is the signature of Christopher D. Cook, the Chairman of the Commission, and the signature of "**Raymond R. Robinson**" subscribed to the foregoing instrument is my signature and in my own proper handwriting.
4. THAT the Chairman and the President are the officers of the Commission duly authorized to execute the foregoing instrument.
- 5 THAT the said document was executed as aforesaid at the City of Saint John in the Province of New Brunswick on the \_\_\_ day of \_\_\_\_\_, 2019.

SWORN TO before me at )  
 Saint John, in the County of )  
 Saint John and Province )  
 of New Brunswick )  
 the \_\_\_ day of \_\_\_\_\_, )  
 2019. )  
 )  
 )  
 \_\_\_\_\_ )  
 Commissioner of Oaths, )  
 )

\_\_\_\_\_  
 Raymond R. Robinson, President and  
 CEO