

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding dated the ■ day of ■, 2024 (the “**Effective Date**”).

### **AMONG**

**THE CITY OF SAINT JOHN**, a body corporate formed by Royal Charter, confirmed and amended by Acts of the Legislative Assembly of the Province of New Brunswick (the “**City**”)

### **AND**

**UPTOWN SAINT JOHN INC.**, body corporate incorporated under the *Companies Act* of New Brunswick (“**Uptown SJ**”, and together with the City, the “**Parties**”, and each individually, a “**Party**”)

**WHEREAS** Uptown SJ is eligible to apply for funding through Downtown New Brunswick Inc.’s “Heart of Communities” Investment Initiative.

**AND WHEREAS** Uptown SJ may receive, on an annual basis, up to Twenty Thousand Dollars (\$20,000.00) for capital projects and Ten Thousand Dollars (\$10,000.00) for planning projects;

**AND WHEREAS** the City may provide matching funds for projects identified in accordance with to the terms and conditions outlined in this Memorandum of Understanding;

**AND WHEREAS** the City and Uptown SJ wish to coordinate their efforts to identify joint projects during the City’s annual budget process to fund projects in the Business Improvement Area (“BIA”) that align with the City’s Strategic Plan and Council Priorities (“Approved Projects”);

**AND WHEREAS** the Parties wish to enter into this Memorandum of Understanding to set out their mutual understandings of their respective commitments in selecting Approved Projects;

**NOW THEREFORE** in consideration of the mutual promises, covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the Parties, the Parties hereby agree as follows:

### **ARTICLE 1 PURPOSE**

#### **1.1 Purpose**

- (a) The purpose of this Memorandum of Understanding is to set out the basic terms by which the Parties intend to select Approved Projects, and if and when selected, to subsequently financially cost share those projects, conditional upon the City providing budget approval.

- (b) This Memorandum of Understand does not, and is not intended to, impose any legally binding obligations on the Parties.

## **ARTICLE 2 OBLIGATIONS OF THE PARTIES**

### **2.1 General Obligations**

- (a) Each Party agrees to cooperate with each other Party and to work together in good faith to identify Approved Projects through the City's annual budgeting process;
- (b) Uptown SJ will make any necessary applications through Downtown NB Inc.'s "Heart of Communities" Investment Initiative (the "Funding") for Approved Projects:
  - (i) For Capital Projects, the Parties agree that all Approved Projects will be for public spaces and within the boundary of the Business Improvement Area in accordance with the City's *Business Improvement Area By-law*; and
  - (ii) For Planning Projects, the Parties agree that all Approved Projects must be aligned with each Party's long-term Strategic Plan.
- (c) If an Approved Project is selected for Funding, the City and Uptown SJ will each seek approval from their respective Council and Board. If Council approves, the City will contribute an amount equal to the funding awarded for the Approved Project and establish which Party will be responsible for delivering on the Approved Project, and how the funds will be administered.
- (d) Upon completion of any Approved Project, the City and Uptown SJ will jointly complete an outcome report demonstrating the return on investment to be presented to Council for the City.
- (e) Each Party agrees to make available the benefits of its experience, knowledge, capabilities and resources (including adequate personnel and the provision of such information as is reasonably necessary) to enable the assessment of the viability of the Project.
- (f) Each Party agrees to use commercially reasonable efforts to meet the timelines agreed by the Parties hereunder.
- (g) Each Party agrees the Project will be cancelled if actual costs exceed budget unless funding can be secured from other sources.
- (h) Each Party agrees that the Project shall be developed on a transparent basis and that all information submitted by a Party shall be shared with each other Party.
- (i) The Parties further acknowledge that the success of the Approved Projects will require the mutual commitment of all Parties and that, as a result, all commitments will be mutually conditional on all other commitments.

### **ARTICLE 3 TERM**

#### **3.1 Term**

This Memorandum of Agreement shall commence on the Effective Date and shall continue in full force and effect until the earlier of the execution of the Definitive Agreements or upon mutual agreement evidenced in writing between the Parties.

### **ARTICLE 4 GOVERNING LAW**

#### **4.1 Governing Law**

- (a) The provisions of this Memorandum of Understanding shall be governed by and construed in accordance with the laws of the province of New Brunswick and the federal laws of Canada applicable therein by and against the Parties and their respective successors and permitted assigns.
- (b) The Parties hereby submit to the jurisdiction of the Court of King's Bench of New Brunswick in any dispute arising in connection with this Memorandum of Understanding.

### **ARTICLE 5 PUBLIC ANNOUNCEMENTS**

#### **5.1 Public Announcements**

- (a) Subject to Section 5.1(b), no Party, without the prior written approval of the other Parties, shall make any public announcements concerning the Project, or any activities or actions under this Memorandum of Understanding or any connected ancillary matter. Such approval shall not unreasonably be withheld or delayed.
- (b) A Party may make an announcement if required by law, or any securities exchange or regulatory or governmental body to which such Party is subject, provided that the announcement is made only after consultation with the other Parties (where practicable).

### **ARTICLE 6 CONFIDENTIALITY**

#### **6.1 Confidential Information**

- (a) The provisions of this Memorandum of Understanding and all information whether written, oral or otherwise, and on whatever medium furnished, transmitted or otherwise disclosed by any Party to another Party in connection with this Memorandum of Understanding shall be deemed proprietary and confidential (collectively "**Confidential Information**"), and shall be treated as confidential by the recipient with the same degree of protection in respect of such Confidential Information as such Party would apply to its own confidential information. The

receiving Party shall not copy or disclose Confidential Information to any third party other than its affiliates or their respective officers, employees, directors, consultants or advisors who is reasonably required to know such information in connection with the Project and who is obligated to maintain the confidentiality of the Confidential Information (collectively, "**Representatives**"), or use such information other than for the purpose of performing the Party's obligations hereunder, except with the prior written consent of the other Parties; or unless such Confidential Information:

- (i) was in the recipient's lawful possession prior to the date of disclosure by the other Party to the recipient;
  - (ii) already is in the public domain;
  - (iii) becomes known to such Party from a third party, without breach of the confidentiality obligation hereunder or breach of any other obligation of confidentiality such third party has; or
  - (iv) is required to be disclosed by applicable law or regulation or judicial or regulatory demand or securities exchange, process, or order of a government official to disclose; provided that, other than where prohibited by applicable law or where such disclosure is required in connection with an examination by a governmental or regulatory agency, each Party shall furnish the other Party with prompt prior written notification of any such request in order to provide an opportunity for the other Party to exercise its rights under applicable law to protect the Confidential Information from disclosure.
- (b) The confidentiality obligations under this Article 6 shall survive the termination or expiration of this Memorandum of Understanding by two (2) years. A Party shall be responsible for a breach of this Article 6 by any Representative in respect of Confidential Information provided to such Representative by it.

## **ARTICLE 7 MISCELLANEOUS**

### **7.1 Representations and Warranties**

Each Party represents and warrants to the other Parties that:

- (a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or formation; and
- (b) it has all requisite power and authority to enter into and to perform all its obligations under this Memorandum of Understanding and to consummate the transactions contemplated hereby.

## **7.2 Compliance with Law**

Each Party covenants and agrees to comply with all applicable laws and regulations in the performance of its obligations hereunder.

## **7.3 Third Parties**

None of the terms of this Memorandum of Understanding are intended to be enforceable by any third party and nothing contained herein shall be construed to give any rights or benefits to anyone other than the Parties hereto.

## **7.4 Entire Agreement**

This Memorandum of Understanding constitutes the entire agreement between the Parties concerning the subject matter of this Memorandum of Understanding and supersedes any previous agreement between or representation by any Party to another concerning the subject matter hereof.

## **7.5 Amendment; Waiver**

This Memorandum of Understanding may not be amended, modified or supplemented except in writing by all of the Parties hereto. No failure or delay on the part of any of the Parties in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder. Any provision hereof which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof and without affecting the validity or enforceability of any provision in any other jurisdiction.

## **7.6 Successors and Assigns**

- (a) This shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assignees.
- (b) No Party may assign this Memorandum of Understanding or otherwise transfer any of its rights or obligations hereunder except with the prior written consent of all other Parties.

## **7.7 Notices**

Written notices required under this Memorandum of Understanding shall be delivered by email, including electronic scan and transmission (e.g. Adobe Acrobat PDF format), courier or hand delivery effective upon the other Party's confirmation of receipt of such email, courier or hand delivery, and shall be sent to the attention of the Parties as follows:

- (a) to the City:



Attention: ■

Email: ■

(b) to Uptown SJ

■

Attention: ■

Email: ■

### **7.8 Counterparts**

This Memorandum of Understanding may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Memorandum of Understanding.

*[Signature page follows]*

Dated at the City of Saint John the day and year first above written.

**THE CITY OF SAINT JOHN**

Per: \_\_\_\_\_

Per: \_\_\_\_\_

**UPTOWN SAINT JOHN INC.**

Per: \_\_\_\_\_

Per: \_\_\_\_\_