

**THIS AGREEMENT** is made in quadruplicate as of the        day of February, 2019

**BETWEEN**

**APPLICANT'S LEGAL NAME**

(the "**Applicant**")

-and-

**CITY OF TORONTO**

(the "**City**")

**WHEREAS** by the adoption of Executive Committee Report Item Number EX27.1 at its meeting of January 15 and 16, 2013 and Executive Committee Report Item Number EX27.13, adopted at its meeting of October 2, 3 and 4, 2017 and Parks and Environment Report Item Number PE29.03, adopted at its meeting of July 23, 2018 (the "Council Reports"), Council of the City of Toronto, authorized the Repurposing of the Sustainable Energy Funds and New Funding Model for City Energy Projects that demonstrate energy savings and/or revenue generation in accordance with existing energy programs' criteria, to be financed through recoverable debt as approved in the annual Capital Budget process for the City's Agencies, Applicants, Commissions, Corporations, Divisions and Community Based (not-for-profit) entities and the enhancement of the program to include building owners in the academic, social, health care, industrial, and commercial sectors, including privately-owned buildings and condominium buildings (not individual residential units) located within the city of Toronto at an interest rate equivalent to the City's cost of borrowing, to a maximum term of twenty years;

**AND WHEREAS** the strategies for implementation of measures based on DESCRIPTION OF PROJECT at PROJECT ADDRESS, Toronto, Ontario (the "**Project**"), as outlined in the Sustainable Energy Plan Financing Detailed Application dated by the Applicant DATE OF APPLICATION and the Energy Audit Report provided by NAME OF ENERGY MANAGEMENT FIRM DATE OF FEASIBILITY STUDY (the "**Feasibility Study**") are eligible for financing from the City;

**AND WHEREAS** the Applicant is authorized to borrow funds from the City.

**NOW THEREFORE THIS AGREEMENT WITNESSETH** that in consideration of the financing provided to the Applicant by the City to finance the Project, the Applicant and the City agree as follows:

**1. Amount and Purpose of Loan**

- 1.1 The City agrees to provide financing to the Applicant in an amount of XXXXXXXX Dollars (\$XXXXXX (the "**City Funds**") to be used by the Applicant for the sole purpose of the Project and as more particularly described in the Feasibility Study attached as Schedule "A" to this Agreement, such Project to be conducted in accordance with the terms and conditions contained herein and such City Funds to be repaid to the City in the manner and under the terms and conditions set out in this Agreement.
- 1.2 The Applicant shall repay the City Funds to the City in monthly repayments, commencing MONTH DATE YEAR as set out in the Repayment Schedule attached to this Agreement as Schedule "B", which may be revised upon mutual written agreement of the Parties, subject to adjustments in the disbursement dates within the calendar year noted for installment disbursements. Each repayment installment of the City Funds shall begin to bear interest as set out in the Repayment Schedule. The principal amount of the City Funds outstanding shall bear interest at XX% (the "Interest Rate").
- 1.3 Any full or partial repayment of the City Funds that are in arrears beyond the first business day of periodic repayments as set out in the Repayment Schedule shall bear late penalty interest at the prime rate of the Royal Bank of Canada in effect at that time per month. Further, any amount of

the City Funds that are in arrears beyond the first business day following the date of the final scheduled repayment as set out in subsection 1.2 above, shall bear late penalty interest at the prime rate of the Royal Bank of Canada in effect at that time per month. Late penalty interest shall be calculated on the daily funding balance (principal and interest) owing.

- 1.4 The interest rate noted in subsection 1.2 is locked for ninety (90) days from the date the City's Corporate Finance Division determines the Interest Rate. Should the Applicant take longer than ninety (90) days to sign this Agreement, the City shall retain the rights to adjust the Interest Rate according to current market conditions. However, once the Agreement is executed, the Interest Rate shall be fixed and locked for the term of the Agreement.

## **2. Pre-requisites to Advances of Funds**

- 2.1 Prior to any advancement of the City Funds to the Applicant under this Agreement, the City shall have received:

- (a) proof of the Applicant's authority to borrow the City funds (if applicable);
- (b) other documentation as required, including but not limited to project documentation and invoices which demonstrate to the satisfaction of the City, the completion of significant pre-established milestones.

- 2.2 The advancement of the City Funds to the Applicant under this Agreement is subject to City Council's Annual Capital Budget Approval.

## **3. Advancement of Funds**

- 3.1 The City will advance funds to the Applicant under this Agreement, up to a maximum of XXXXXXXX Dollars (\$XXXXXX) upon the Applicant providing the City with the invoice requesting advancement of an Installment and as set out in the Repayment Schedule attached as Schedule "B".

## **4. Change in scope of Project and Total Project costs**

- 4.1 The Applicant shall obtain advance written approval from the City for any material change in the scope of the Project.

- 4.2
- (i) The Applicant agrees and acknowledges that the amount of the City Funds is based on the total estimated Project costs, as set out in the Feasibility Study.
  - (ii) In the event that the actual total Project costs, based on Project invoices, are less than the estimated Project cost, the Applicant shall immediately repay to the City an amount equal to the percentage of the estimated Project costs represented by the City Funds multiplied by the difference between the estimated Project costs and the actual Project costs. In the event that City Funds equals the estimated Project costs, any percentage reduction in actual total Project costs relative to estimated Project costs will be repaid to the City.
  - (iii) In the event of a repayment of a portion of the City Funds in accordance with Clause 4.2(ii), the repayments set out in section 6 and the Repayment Schedule hereof shall be adjusted accordingly.

## **5. Repayment**

- 5.1 The Applicant shall repay the City Funds to the City in accordance with the repayment terms set out in subsections 1.2 and 1.3 and the Repayment Schedule, commencing on MONTH DATE YEAR, over a period of XX (XX) year, as may be amended upon mutual written agreement of the parties.

- 5.2 The Applicant agrees to fulfill its obligation to repay the City Funds to the City in accordance with this Agreement regardless of the magnitude of the energy cost savings or energy generation realized by the Project.
- 5.3 The Applicant may repay the outstanding balance of the City Funds or any portion of the City Funds advanced under this Agreement at any time during the currency of this Agreement, without penalty. Any payments made in excess of the Repayment Schedule will go directly to paying down the principal of the loan, and the Repayment Schedule shall be adjusted accordingly with the same effective interest rate as defined in subsection 1.3.

## **6. Term and Termination**

- 6.1 This Agreement shall terminate when the Applicant has fully repaid its indebtedness to the City, over the XX (XX) term of the Repayment Schedule or as the Applicant may sooner repay the entirety of the City Funds.
- 6.2 If the Applicant has not commenced work on the Project on a best efforts basis within one year of the date of this Agreement, then the City may, upon ten days written notice, in its sole discretion, terminate this Agreement and no funds shall be payable by the City to the Applicant.

## **7. Representation and Warranties**

- 7.1 To induce the City to advance the City Funds, the Applicant covenants, represents and warrants to and in favour of the City as follows:
- (a) that no City Funds advanced to it shall be used for the personal benefit of Applicant or Applicant member or director or officer, as the case may be, and should any City Funds be so used, the entire amount of the outstanding City Funds shall become immediately due and payable upon demand by the City;
  - (b) that it is a validly subsisting corporation under the laws of the Province of Ontario; and,
  - (c) that the Applicant, if requested, will display signs (to be provided by the City at its own cost) in prominent places at the retrofit work sites during the construction and for at least a period of one year, which acknowledges the financing received from the City. Alternatively, an acknowledgement of the energy financing received by the Applicant may be included in publications, documents, notices and/or websites of the City.

## **8. Emission Credits**

The parties agree that all emission reduction credits attributable to the Project shall become the property of the City, and the City shall make all decisions respecting the disposition of the emission reduction credits consistent with Executive Committee Report EX31.15 "Revised Carbon Credit Policy and Revenue Opportunities" adopted by City Council at its meeting of May 7, 8, 9 and 10, 2013.

## **9. Measurement and Verification**

Within the repayment period, the Applicant will be obligated through the provision of financing, any and all projects, to participate in the Evaluation, Measurement and Verification initiatives and plans of the Environment and Energy Division, in which:

- (a) the Applicant will participate in compiling data; and,
- (b) the Applicant will assign a representative to cooperate with the City's site visits and answer questions related to Measurement and Verification activities.

## 10. Covenants

- 10.1 The Applicant covenants and agrees that, so long as any part of the City Funds have not been repaid in full, it will:
- (a) repay the City Funds in accordance with the terms set out in this Agreement, and shall do, observe, perform, fulfill and keep all the provisions, agreements, covenants and stipulations set forth in this Agreement and the Feasibility Study;
  - (b) comply with all covenants and other provisions of this Agreement;
  - (c) comply with all federal, provincial and municipal legislation, by-laws and policies related to the subject matter of this Agreement;
  - (d) furnish to the City such information, financial, technical and otherwise with respect to the Project, as the City may from time to time require;
  - (e) maintain at all times proper financial and business records in accordance with the Handbook of the Canadian Institute of Chartered Accountants as the same is amended from time to time, including an annual financial statement signed by a qualified member of the Canadian Institute of Chartered Accountants; and,
  - (f) allow the City to examine its books and accounts specifically related to the Project upon notice being given by the City.
- 10.2 The City covenants and agrees that it will advance the City Funds to the Applicant in accordance with subsection 1.1 of this Agreement set out in Schedule "B", provided that the Applicant is not in breach of any of the covenants and other provisions set forth in this Agreement and the Feasibility Study.

## 11. Events of Default

- 11.1 Upon providing thirty (30) days' notice to the Applicant the City may demand immediate payment of the City Funds upon the happening or during the continuance of any one or more of the following events (herein in the singular called "**Event of Default**" or in the plural called "**Events of Default**" and such happening being a "**Default**" hereunder):
- (a) if the operation of all or substantially all of the Applicant is terminated; or
  - (b) if the Applicant abandons or attempts to abandon the Project; or
  - (c) if the Applicant defaults in the performance of any of the terms or covenants of this Agreement, including the repayment of the City Funds, and such default has not been cured to the satisfaction of the City within thirty (30) days of notification by the City to the Applicant of such Event of Default; or
  - (d) if the Applicant fails to notify the City promptly of any material change in the information contained herein relating to its business, the Project and of the details of any substantial claims affecting the Applicant and such default has not been cured to the satisfaction of the City, acting reasonably, within thirty (30) days of notification by the City to the Applicant of such Event of Default; or
  - (e) if the Applicant fails to pay all taxes, rates, levies, assessments and other charges of every nature in respect of the Project, which may be lawfully levied, assessed or imposed against or in respect of the Applicant as and when the same becomes due and payable and such default has not been cured to the satisfaction of the City within thirty (30) days of notification by the City to the Applicant of such Event of Default unless the Applicant is diligently contesting such taxes, rates, levies or assessments.

**12. Waiver, etc.**

12.1 No delay or omission by the City in exercising any right or remedy hereunder or with respect to the provision of the City Funds and no waiver as to Default shall operate as a waiver thereof or of any other right of remedy, and no single or partial exercise thereof shall preclude any other or further exercise thereof or the exercise of any other right or remedy. Furthermore, the City may remedy any default by the Applicant hereunder or with respect to the City Funds in any reasonable manner without waiving the Default remedied and without waiving any other prior or subsequent default by the Applicant. All rights and remedies of the City granted and recognized herein are cumulative and may be exercised at any time and from time to time independently or in combination.

**13. Notice**

13.1 Any notice given under this Agreement shall be in writing and any such notice shall be served either by personal delivery to the City or to the Applicant or by registered mail, or email addressed to the recipients as follows:

(a) if to the City, at:

City of Toronto  
Metro Hall  
55 John Street, 2<sup>nd</sup> Floor  
Toronto, Ontario M5V 3C6  
Attention: Ms. Laura Atkins, Manager, Environment & Energy Program Administration,  
Environment & Energy Division  
E-mail: laura.atkins@toronto.ca

(b) if to the Applicant, at

COMPANY NAME  
ADDRESS  
CITY, PROVINCE POSTAL CODE  
ATTENTION: CONTACT NAME  
TITLE

Fax:  
Email:

13.2 Any notice given in accordance with subsection 13.1 hereof, shall be deemed to have been given on the day of delivery and shall be deemed if sent by registered mail to be received five (5) days after posting in Canada (except in the event of a postal interruption, in which event such notice shall be deemed to be received when received) provided that in the case of electronic communication notice shall only be valid if: (i) followed by an original copy of such notice; or (ii) the recipient specifically acknowledges receipt thereof.

13.3 Any of the parties hereto may at any time give notice under this Section to the other of a change of address and thereafter such changed address shall be substituted for the previous address set out in subsection 13.1 hereof.

**14. Miscellaneous**

14.1 If any dispute occurs between the Applicant and the City relating to the interpretation or implementation of any of the provisions of this Agreement, the parties shall make a good faith attempt to resolve such dispute via good faith negotiation. If good faith negotiation is unsuccessful, the parties may choose to resolve such dispute by non-binding mediation. Each party shall bear its own costs and expenses with respect to any such negotiation or mediation, including one-half of the fees and expenses of the mediator, if applicable.

- 14.2 The parties must mutually agree in writing as to the timing, content and all factors relating to any public announcements regarding this transaction.
- 14.3 Neither party shall assign its rights and obligations in the Agreement without the written consent of the other party.
- 14.4 This Agreement shall be binding upon and enure to the benefit of the City, the Applicant, and their respective successors and assigns.
- 14.5 This Agreement embodies the entire agreement and understanding between the parties hereto and supersedes all prior agreements, and undertakings whether oral or written relative to the subject matter hereof.
- 14.6 If any provisions under this Agreement of the application thereof to any circumstances are held to be invalid or unenforceable, the remaining provisions of this Agreement or the application thereof to other circumstances are not affected thereby and are valid and enforceable to the fullest extent permitted by law.
- 14.7 This Agreement is made pursuant to and shall be governed by and construed in accordance with the laws of the Province of Ontario, and the laws of Canada applicable therein.
- 14.8 For so long as any part of the City Funds remain outstanding and unpaid, all obligations of the Applicant under this Agreement shall expressly or by their nature survive termination or expiration of this Agreement and shall continue in full force subsequent to and notwithstanding such termination or expiration until and unless they are satisfied or by their nature expire.
- 14.9 The division of this Agreement into paragraphs, subparagraphs and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.
- 14.10 Time shall be of the essence.
- 14.11 The following Schedules form part of this Agreement:  
Schedule "A": Feasibility Study  
Schedule "B": Repayment Schedule



SCHEDULE "A"

**Feasibility Study provided by NAME OF ENERGY MANAGEMENT FIRM DATE OF  
FEASIBILITY STUDY for APPLICANT'S NAME AND PROJECT ADDRESS**

(Bound Separately)

SAMPLE



SCHEDULE "B"

**Repayment Schedule**

**Repayment Schedule for APPLICANT'S NAME**

SAMPLE