

THE CORPORATION OF HALDIMAND COUNTY

By-law Number /23

Being a by-law to deem the land for the Dunnville Affordable Housing Project as a Municipal Housing Facility and to authorize entering into a Municipal Capital Housing Facility Agreement

WHEREAS Section 110 of the *Municipal Act, 2001*, S.O. C. 25, as amended, (Act) authorizes the Council of a municipality to enter into agreements for the provision of municipal capital facilities by any person, including another municipality;

WHEREAS Ontario Regulation 603/06 provides that municipal housing project facilities is a class of municipal capital facility for which municipalities may enter into agreements pursuant to the Act;

WHEREAS Haldimand County is a minority shareholder of the Haldimand Norfolk Housing Corporation (HNHC) and the Shareholders Agreement for the HNHC allows Haldimand County to develop new housing by obtaining new funding and participating in innovative opportunities, including partnerships and ownership interests;

WHEREAS Haldimand County enacted By-law 2405/23 (Municipal Housing Facility By-law) to permit the County to enter into municipal capital housing facility agreements under Section 110 of the Act;

AND WHEREAS it is considered expedient to enact a Municipal Housing Project Approval By-law for the Dunnville Affordable Housing Project;

NOW THEREFORE, the Council of The Corporation of Haldimand County enacts as follows:

1. **THAT** the Dunnville Affordable Housing Project development, located on lands described as PIN # 38122-0372(LT) BLOCK 3, PLAN 18M41; TOGETHER WITH AN EASEMENT OVER PT 4 18R6834 AS IN HC169733; AND PART OF PIN # 38122-0372, PART 1 OF PART OF BLOCK 2, PLAN 18M41; AS IN 18R-8058; HALDIMAND COUNTY, be deemed as a Municipal Housing Facility.
2. **THAT** the Mayor and Clerk be authorized to execute a Municipal Capital Housing Facility Agreement with the Haldimand Norfolk Housing Corporation, specific to the Dunnville Affordable Housing Project, attached to, and forming part of this by-law.

3. **AND THAT** this by-law take force and effect on the date of passing.

READ a first and second time this 29th day of May, 2023.

READ a third time and finally passed this 29th day of May, 2023.

MAYOR

CLERK

**Schedule “A”
MUNICIPAL CAPITAL HOUSING FACILITY AGREEMENT**

THIS AGREEMENT MADE this ____ day of _____, 2023.

B E T W E E N:

HALDIMAND NORFOLK HOUSING CORPORATION

(“HNHC”)

-and-

THE CORPORATION OF HALDIMAND COUNTY

(the “County”)

WHEREAS Pursuant to Section 110 of the *Municipal Act, 2001*, S.O. 2001, C. 25, as amended, (the “Act”) the Council of a municipality may enter into agreements for the provision of municipal capital facilities by any person, including another municipality;

AND WHEREAS Ontario Regulation 603/06 section 7, as amended, made under the Act, provides that municipal housing project facilities is a class of municipal capital facility for which municipalities may enter into agreement pursuant to section 110(3) and 110(7) of the Act;

AND WHEREAS Haldimand County enacted By-law 2405/23 (Municipal Housing Facility By-law) to permit the County to enter into municipal capital housing facility agreements under Section 110 of the Act;

AND WHEREAS By-law 2405/23 sets out the eligible assistance that the municipality may consider granting to the developer of a municipal housing project facility;

AND WHEREAS the County is desirous of entering into a municipal capital housing facility agreement with the Haldimand Norfolk Housing Corporation, as the developer of a mixed housing project, including affordable housing units as defined in By-law 2405/23, to be located on Lands legally described in Schedule A (hereinafter referred to as the “Project”);

AND WHEREAS the County is a minority shareholder of the Haldimand-Norfolk Housing Corporation;

AND WHEREAS the Shareholders Agreement for the HNHC stipulates in Article 2.1 that Haldimand County may develop new housing within the Haldimand Housing Portfolio, as defined in the Shareholders Agreement, by obtaining new funding and participating in innovative opportunities, including partnerships and ownership interests;

AND WHEREAS Article 2.18 of the Shareholders Agreement for the HNHC provides the authority for each shareholder to control its own housing portfolio;

NOW THEREFORE in consideration of the mutual covenants contained herein, the County and HNHC undertake and agree as follows:

1 DEFINITIONS

The following words and phrases used in this Agreement shall have the following meanings ascribed to them:

“Affordable Housing” means affordable housing as defined in the Municipal Capital Housing Facility By-law 2405/23;

“Agreement” means this Municipal Capital Housing Facility Agreement and all incorporated schedules thereof;

“Approval” means approvals of any statutory authority required to construct and complete the Project, including any official plan amendment, zoning by-law amendment and site plan approvals to permit construction of the project and building permits;

“Commencement Date” means the date this agreement is signed by both parties;

“Development Activities” means those activities which are normally undertaken for the development, construction, repair, renovation or conversion of buildings for residential purposes and includes, without limitation, preliminary activities such as the preparation of design plans and the making of 3 all applications for municipal approvals;

“Housing Facility By-law” means Haldimand County’s Municipal Capital Housing Facility By-law (By-law No. 2405-23) passed by Haldimand County under section 110 of the Municipal Act, 2001 as amended from time to time;

“Lands” means those lands described in Schedule “A” of this agreement;

“Project” means the Housing Project to be constructed on the Lands, which shall comply with the requirements of Haldimand Municipal Capital Housing Facility By-law 2405-23.

2 SCHEDULES

2.1 Schedule “A” is attached hereto and forms part of this Agreement and is to be interpreted as if the contents thereof were included in this agreement. HNHC covenants with the County to abide by each and every provision contained in the Schedule “A” attached hereto.

2.2 While not added as Schedules, the Proponent also covenants to abide by each and every provision of the following documents as such may apply from time to time to it, namely,

(a) Municipal Capital Housing Facility By-law 2405-23 of Haldimand County

3 PURPOSE OF AGREEMENT

3.1 The County has approved the Project as a Municipal Capital facility within the class permitted by the act and described as municipal housing project facilities.

3.2 This Agreement is a Municipal Capital Housing Project Facility Agreement, as contemplated by the Housing Facility By-law. The purpose of this Agreement is to set out the rights and obligations of HNHC and the County with respect to the assistance being provided to HNHC for a Housing Project on the Lands.

3.3 Obligations

HNHC agrees:

- i. to proceed diligently with the construction of the Project as contemplated and as indicated in their RFP submission and the related Schedules forming part of this agreement;
- ii. to maintain and operate the Project as Affordable Housing in accordance with the terms and conditions of the Project Agreements, the Housing Facility By-law and the RFP;
- iii. to use the full amount of all contributions identified in this Agreement for the purpose of its Development Activities in connection with the Project.

3.4 Use and Management

The HNHC shall construct, use, manage and operate the Project solely, continuously and actively as Units of Affordable Housing, as defined in the Municipal Capital Housing Facility By-law. The Proponent shall not use or permit the use of the Project or any part thereof for any other business or purpose except as may be permitted under the Municipal Capital Housing Facility By-law, without express written consent from the County.

4 CONTRIBUTIONS

4.1 The County will grant the following contributions to HNHC to facilitate the development of the Project:

- i. A maximum monetary contribution in the amount of \$4,600,000, the timing of which will be at the sole discretion of Haldimand County.
- ii. Reimbursement of planning fees including zoning by-law amendment application and site plan application fees, building permit application fees and development charges, to a maximum of \$400,000;
- iii. Transfer of unencumbered Lands as outlined in Schedule A, with an estimated value of \$300,000, together with costs of all associated conveyance fees, for nominal consideration of \$2.00.

5 REPRESENTATIONS AND WARRANTIES

5.1 The HNHC represents and warrants to the County that:

- i. Due Incorporation

The HNHC is a corporation duly incorporated, organized and existing as a corporation without share capital under the laws of (Canada) or (Ontario), is permitted under its letters patent to carry on its operations without pecuniary gain to its members and any profits or other accretions are to be used in promoting its objects and has the necessary corporate power and authority to own all its property and carry out its activities to be conducted by it

in respect of the Project as contemplated under this Agreement and all other agreements contemplated thereunder.

ii. Compliance

The Project will be constructed in accordance with all applicable environmental laws, zoning by-laws and building codes, work place safety legislation and any other law or regulation of any nature or kind that is applicable in any way to the Project.

5.2 Covenants of HNHC

The HNHC covenants and agrees with the County that, so long as any obligation is owing by the HNHC to the County hereunder it shall:

- i. take all such actions and do all such things required to develop and continuously carry on the construction of the Project in a good and workmanlike manner and in accordance with approved plans and specifications and to complete such construction no later than December 31, 2026, subject to acts of God and other events which occur beyond the control of the HNHC, including, strikes, lock-outs or other labour or industrial disturbances, civil disturbances, arrests and restraints, interruptions by government or court orders, future valid orders of any regulatory body having proper jurisdiction, wars, riots, sabotage, blockades, embargoes, insurrections, lightning, earthquake, fires, storms, floods and explosions and to pay all costs thereof;
- ii. do or cause to be done all acts and things necessary to preserve in full force and effect the existence of the HNHC and all licenses and permits required for the carrying on of the operations of the HNHC at and from the Land and to preserve and protect all of the property, real and personal, owned and used by the HNHC and its representatives in connection with the Project and to cause the same to be properly maintained and to be kept in good state of repair.

5.3. For the purposes of clarity, the County acknowledges and agrees that neither this Agreement nor the by-law referred to in Section 1 of this Agreement shall in any way affect the zoning of the Property or the permitted uses of the Property under applicable laws.

6 TERM

- 6.1 This Agreement shall be effective on the date of execution by the County evidenced by the date identified on the first page of this Agreement.
- 6.2 The term of this Agreement shall be from the effective date to the latest date that all obligations and commitments of the County and the HNHC under this Agreement are fulfilled.
- 6.3 This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

7 TERMINATION

7.1 The County may, by Notice in writing to HNHC terminate this Agreement immediately in the event that:

- i. HNHC is adjudged bankrupt, makes a general assignment for the benefit of creditors or a receiver is appointed on account of HNHC's insolvency;
- ii. HNHC prior to or after entering into this Agreement, makes a material misrepresentation or omission or provides materially inaccurate information to the County; or
- iii. HNHC fails to comply with any of its obligations arising from this Agreement and such failure is not remedied within fifteen days (15) after written notice of such failure from the County or such other later time period set by the County in its sole discretion. Provided if the nature of the default is such that it cannot be reasonably be remedied within fifteen (150 days after written notice of such failure but can be remedied within ninety (90) days and HNHC have commenced rectification of the breach within fifteen (15) days after written notice of such failure from the County and diligently pursues such rectification, it shall not be considered in default until the expiry of ninety (90) days following after written notice of such failure.

8 ASSIGNMENT

- 8.1 HNHC shall not assign or transfer this Agreement or any of its responsibilities, rights or obligations under this Agreement or any of the Project Agreements without the prior written consent of the County, and without the assignee or transferee entering into an agreement to assume the obligations under this Agreement.

9 EVENTS OF DEFAULT AND REMEDIES

- 9.1 HNHC covenants and agrees that if the project has not been substantially commenced on or before January 1, 2026, it shall immediately reconvey the Lands to the County, at its own expense, free and clear of all encumbrances to the County.

10 RECITALS AND SCHEDULES

- 10.1 The parties agree that the recitals set out in this Agreement are true in substance and in fact, and that the Recitals and Schedules form an integral part of this Agreement.

11 PARTIAL INVALIDITY

- 11.1 If any provision of this Agreement or the application of it to any person or circumstances is held to any extent invalid or unenforceable, the remainder of this Agreement or the application of its provisions to persons or circumstances other than those as to which it is held invalid or unenforceable is not affected.

12 MUNICIPAL CAPITAL HOUSING FACILITY BY-LAW 2405/23

12.1 HNHC covenants to abide by and comply with all provisions of the Municipal Capital Housing Facility By-law 2405/23 and in particular, the following:

- i. The Term of this Agreement and the designation of the lands as municipal capital facilities shall be from the commencement date to the earliest of;
 - (a) May 31, 2048
 - (b) The day HNHC ceases to use the lands as municipal capital facility as defined in section 110 of the Municipal Act, 2001 and Ontario Regulation 603/06;
 - (c) The day HNHC ceases to use the lands in compliance with the provisions respecting Municipal Housing Capital Facility Agreements in Haldimand By-law 2405/23;
 - (d) The day HNHC ceases to own the lands without having assigned this Agreement to the transferee of the lands in accordance with Section 7 of this agreement;
 - (e) The day HNHC or their permitted successors cease to use the lands for the purposes of Municipal Housing Project Facilities in accordance with Haldimand By-law 405/23;
 - (f) May 31, 2048;
 - (g) The day this Agreement is terminated in accordance with any of the provisions of this agreement.

Provided the County shall have the right, in its discretion to extend the term, by provision of notice, in writing, not less than 60 days prior to May 31, 2048 to HNHC, for a further five-year period ending May 31, 2053 with all terms and conditions to remain the same:

- ii. The Project shall provide no fewer than 3 Housing Units;
- iii. The Project shall provide a minimum of 75% of the Housing Units at Affordable Rent;
- iv. The Affordable Rent (as defined by Municipal Housing Facility By-law 2405/23) for each Housing Unit within the Project funded under this program shall be subject to rent increase restrictions as per the Residential Tenancies Act, as may be amended for the duration of the term of this Municipal Housing Project Facility Agreement;
- v. The Proponent and any successor in title shall comply with section 5 of the Municipal Housing Facility By-law 2405/23 so long as this Municipal Housing Project Facility Agreement remains in effect. For greater particularity, section 5 of the Municipal Housing Facility By-law 2405/23 is as follows: "Under no circumstances shall a Unit be made available at any time during the period the Municipal Housing Project Facilities Agreement is in force:
 - (a) at a monthly rent that is not within the definition of Affordable Rent as outlined in this By-law, or
 - (b) to individuals or families who, at the time the Unit was initially rented to them already owned residential property as determined by HNHC after making reasonable enquiries;
- vi. HNHC shall indemnify the Municipality against any costs, expenses, loss or damages arising out of HNHC's failure to perform any of its obligations pursuant to this Agreement.

13 DELAY OF APPLICABLE DEVELOPMENT CHARGES

13.1 The County shall permit HNHC and its permitted successors to delay payment of development charges applicable to the Lands from the Commencement Date to termination of this Agreement, provided that HNHC, in the event this Agreement is not terminated in accordance with its terms at any time prior to May 31, 2048, the payment of development charges otherwise owing shall be permanently forgiven. If HNHC and its permitted successors is not in default of this Agreement and the County terminates this Agreement without cause then the payment of development charges otherwise owing will be permanently forgiven.

14 GENERAL MATTERS

14.1 Communication

HNHC and the County will maintain regular and open communication in respect to the progress and operation of the Project and the administration of this Agreement.

14.2 Laws of Province

Any obligation in this Agreement is subject to the laws of Canada, the laws of the Province of Ontario and applicable by-laws of the County, as those laws and by-laws apply to the interpretation of this Agreement. Any reference to a statute or by-law in this Agreement includes any subsequent amendments or replacement and substitution of that statute or by-law.

14.3 Notice

Any notice required under this Agreement must be in writing and delivered by personal service or facsimile to the County at the following address:

Haldimand County
53 Thorburn Street South
Cayuga, ON N0A 1E0
Attention: General Manager, Corporate & Social Services
Phone: 905-318-5932

and to the Proponent at the following address:

Haldimand Norfolk Housing Corporation
Unit 2 -25 Kent Street North
Simcoe, ON N3Y 3S1
Attention: Chief Executive Officer
Phone: (519) 426-7792

The parties shall give notice to each other in writing of any change in this information. Any notice under this Agreement shall be deemed to be delivered on the date when personally served or, if mailed, on the fifth day after the notice was mailed.

14.4 Contact Persons

The HNHC shall identify in writing one or more contact persons, who are authorized by the HNHC to respond on its behalf and who can respond to requests from the County and receive and transmit information from the County and shall give notice to the County of any change in any contact person.

14.5 Amendment of Agreement

This Agreement may not be amended except on the consent of the parties and provided that such amendment shall be evidenced by a further written document.

14.6 Invalidity

The invalidity or unenforceability of any provision or covenant contained in this Agreement shall not affect the validity or enforceability of any other provision or covenant herein contained and any such invalid provision or covenant shall be deemed to be severable.

14.7 Indemnification

The HNHC covenants to abide by and release, indemnify and save harmless the County and its officers, Councillors, servants, agents or volunteers from and against any and all liability, loss, costs, damages and expenses, causes of action, actions, claims, demands, lawsuits, or other proceedings and from whatever source that may be brought against them or any of them as a result of this agreement or the development or existence of the Project or anything directly or indirectly connected thereto or therewith and in addition such indemnity shall extend to any and all administrative and legal costs on a full indemnity basis that are occasioned to the County and its officers, Councillors, servants, agents or volunteers as a result of their defense of any such claims.

The County covenants to abide by and release, indemnify and save harmless the HNHC and its officers, its Board, servants, agents or volunteers from and against any and all liability, loss, costs, damages and expenses, causes of action, actions, claims, demands, lawsuits, or other proceedings and from whatever source that may be brought against them or any of them as a result of this agreement or the development or existence of the Project or anything directly or indirectly connected thereto or therewith and in addition such indemnity shall extend to any and all administrative and legal costs on a full indemnity basis that are occasioned to the HNHC and its officers, its Board, servants, agents or volunteers as a result of their defense of any such claims.

14.8 Administration of Agreement

The General Manager of Corporate & Social Services will administer the terms of this Agreement on behalf of the County. The General Manager shall administer and manage the Agreement including the provision of any consents, approvals, waivers, notices provided that the General Manager may, at any time, refer consideration of such matter (including their content) to the County's Council for its determination and direction.

15 FURTHER ASSURANCES

15.1 The Parties shall do and execute all such further acts, deeds, instruments or things as may be necessary or desirable for the purpose of carrying out the intent of this Agreement.

15.2 Each obligation expressed in this Agreement, even though not expressed as a covenant, is considered to be a covenant for all purposes.

16 REGISTRATION

16.1 Municipal Capital Housing Facility By-law 2405/23 and this Agreement may be registered by the County against the title to the lands and HNHC expressly consents to the registration. It is specifically acknowledged and agreed by the County that any such registration will be subordinated to any Canadian Mortgage Housing Corporation insured mortgage financing registered against the lands.

16.2 In the event of Default on any Canadian Mortgage housing Corporation insured mortgage financing registered against the lands, it is specifically acknowledged and agreed by the County that if the mortgagee therein is unable to sell and recoup its mortgage interest in the lands after a period of six (6) months, then the Canadian Mortgage Housing Corporation shall have the option under the terms of its Master Loan Insurance Policy with the mortgagee to force the Termination of this Municipal Capital Facility Agreement and the discharge of any registrations of this Municipal Capital Facility Agreement from the Title such that the Lands do not have to be marketed as a Housing Project.

IN WITNESS WHEREOF the County and HNHC have executed this Agreement in the manner prescribed by law.

Haldimand Norfolk Housing Corporation

Date: _____

Signature: _____

Name: Matt Bowen

Title: CEO, Haldimand Norfolk Housing Corporation

I have the authority to bind the Corporation

The Corporation of HALDIMAND COUNTY

Date: _____

Signature: _____

Name: Shelley Ann Bentley

Title: Mayor, Haldimand County

I/We have the authority to bind the Corporation I/We have the authority to bind the Corporation

The Corporation of HALDIMAND COUNTY

Date: _____

Signature: _____

Name: Evelyn Eichenbaum

Title: Clerk, Haldimand County

SCHEDULE "A"

Legal Description of Property

PIN # 38122-0372(LT) BLOCK 3, PLAN 18M41; TOGETHER WITH AN EASEMENT OVER PT 4 18R6834 AS IN HC169733; AND PART OF PIN # 38122-0372, PART 1 OF PART OF BLOCK 2, PLAN 18M41; AS IN 18R-8058; HALDIMAND COUNTY