

This **AGREEMENT FOR SERVICES** made the ____ day of _____ 2018

BETWEEN

CLEAN NOVA SCOTIA FOUNDATION, a body corporate established pursuant to the
Clean Nova Scotia Foundation Act, SNS 1988, c 7

(the “**Clean Foundation**”)

- and -

_____, a municipality continued pursuant to the *Municipal Government
Act*, SNS 1998, c 18

(the “**Municipality**”)

WHEREAS

- A. Council for the Municipality had entered into a Residential Property Assessment Clean Energy (PACE) Program with Clean Foundation;
- B. Council for the Municipality passed a motion to award the administration of the Clean Energy Financing Program to Clean Foundation for a period of 1 year (subject to positive evaluation on an annual basis), ending March 31, 2019; which is to be known as Clean Energy Financing (the “**Program**”);
- C. According to the terms of this agreement, the municipality may, at their sole discretion, negotiate services for future years with Clean Foundation, according to the general terms contained in this agreement and all associated documents thereto;
- D. As part of the Program, the Municipality will offer eligible owners of properties within the Municipality financing to enable Eligible Clean Energy Upgrades (as defined below) to be made to qualifying properties;
- E. The objectives of the Agreement include the establishment of an agreement regarding services and payment terms for the Program; and
- F. The Municipality and Clean Foundation have decided to enter into this Agreement to further clarify their respective roles, rights and obligations in relation to the Program and their Agreement and otherwise.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the promises and mutual covenants contained herein, the parties hereto covenant and agree with the others as follows

ARTICLE 1. INTERPRETATION

1.01 **Definitions** – in this Agreement, unless there is something in the context or subject matter inconsistent therewith, the following words and expressions shall have the following meanings:

- (a) **“Business Day”** means a day other than a Saturday or Sunday or any other day upon which the clerk’s office of the Municipality is not open for the transaction of regular business throughout its normal business hours;
- (b) **“Eligible Clean Energy Upgrade”** means an installation affixed to a subject property within the Municipality, which:
 - (i) will result in improved energy efficiency, the generation of renewable energy, or reduced greenhouse gas emissions;
 - (ii) involves building envelope upgrades such as caulking and weather stripping, duct / air sealing, insulating, or energy efficient windows and doors; building heating, ventilation and air conditioning system upgrades such as heat pumps, wood or pellet stoves, or furnaces or boilers; renewable energy upgrades such as solar thermal panels, solar photovoltaic panels or wind turbines; or such other clean energy upgrades as are approved and agreed in writing; and
 - (iii) is identified as an eligible upgrade in the Municipality’s Property Assessed Clean Energy Upgrade Standards Policy, and meets or exceeds applicable energy efficiency standards as defined in that policy;
- (c) **“Maximum Eligible Amount”** means the maximum amount that the Municipality notifies Clean Foundation in writing is eligible for the fiscal year for financing by the Municipality under the Program in respect of each Participant, Property or Clean Energy Upgrade;
 - (i) the maximum total annual financing ceiling is to be determined by the municipality;
 - (ii) Clean Foundation’s responsibility is to ensure that this financing amount is not exceeded through its management of the property owner Customer Agreements; and
 - (iii) Annual financing levels may change from year to year;
- (d) **“Participant”** means a homeowner that enters into a Customer Agreement with the Municipality to participate in the Program;
- (e) **“Program”** has the meaning assigned in Recital A above; and

- (f) “**Term**” has the meaning assigned in paragraph 9.01 below.
- 1.02 **Governing Law** - This Agreement shall be governed by and construed in accordance with the laws of the Province of Nova Scotia and the federal laws of Canada applicable therein.
- 1.03 **Calculation of Time** - When calculating the period of time within which or following which any act is to be done or step taken pursuant to this Agreement, the date which is the reference date in calculating such period shall be excluded. If the last day of such period is not a Business Day, then the time period in question shall end on the first Business Day following such non-Business Day.

ARTICLE 2. SERVICES

- 2.01 **Ongoing Services** – During the Term, Clean Foundation shall:
- (a) screen applications from homeowners for eligibility to participate in the Program based on published criteria for the Program, including the absence of any arrears owing to the Municipality by the applicant homeowner;
 - (i) the Municipality may establish additional eligibility requirements whereby certain homeowners may not be eligible in the program;
 - (b) arrange for the Customer Agreement to be signed by eligible homeowner applicants and approved and signed by the Municipality and ensure this document is updated whenever there are Program changes;
 - (c) provide guidance to Participants about arrangements for home energy assessments and the availability of energy efficiency rebates and any other programs that may provide financial assistance to Participants that are available as of the date of the Participant’s Customer Agreement with the Municipality;
 - (d) evaluate the home energy assessment report obtained by each Participant and advise each Participant about which recommendations within the report are Eligible Clean Energy Upgrades that are eligible for financing through the Program;
 - (e) arrange and review any necessary supplemental assessments;
 - (f) review contractor quotes supplied by Participants to confirm the scope of services is restricted to Eligible Clean Energy Upgrades, and confirm that the cost of the proposed Eligible Clean Energy Upgrade(s) will meet the savings to debt ratio required by the Municipality;
 - (g) pay the full amount (including HST), or the Maximum Eligible Amount, whichever is less, of invoices from contractors that are consistent with quotes pre-approved pursuant to paragraph 2.01(f) above, upon receipt of a copy of the

invoice from a Participant and evidence satisfactory to Clean Foundation of substantial completion of the contemplated Eligible Clean Energy Upgrade. Any additional amount above the Maximum Eligible Amount will be the sole responsibility of the homeowner;

- (h) confirm / certify with the Municipality that the home energy upgrade process is complete;
- (i) provide evaluation services for the Program annually; including Participant interviews, and Program data summaries (such as cost and projected energy savings); and
- (j) communicate to Participants the option for a post-installation follow up audit and encourage their participation in an effort to provide post-installation verification.

ARTICLE 3. MARKETING

- 3.01 The parties understand that marketing and promotion is key to participant uptake and a successful program. In year one of The Program Clean Foundation agrees to provide the municipality with communications and marketing support as outlined in Appendix A. To support ongoing promotion beyond the initial year of the Program, Clean Foundation will provide existing on-brand marketing materials in electronic form, for use by the municipalities as they see fit. Clean Foundation will also commit to maintaining and updating the CleanEnergyFinancing.ca website, and responding to public and media inquiries about the Program.
- 3.02 The parties may or may not be able to dedicate funds to marketing. However, the parties will raise awareness of the Program through their general promotional efforts and relevant cross-promotional opportunities. They will also take advantage of other appropriate marketing opportunities as capacity allows.

ARTICLE 4. PRICE AND PAYMENT

- 4.01 **One Time On-boarding Fee** – In year one of the Program the municipality agrees to pay Clean Foundation an onboarding fee of \$13,300 which will be used to cover start-up costs and services as outlined in Appendix A. The fee and the outlined services are limited to the start-up year only.
- 4.02 **Ongoing Charges** – Throughout the Term, the Municipality shall pay to Clean Foundation all of the following amounts, plus any applicable taxes:
 - (a) \$150 per Customer Agreement signed pursuant to paragraph 2.01(b) above;
 - (b) Applicable fees per home energy assessment, if conducted by Clean Foundation. Fees are currently \$99 for electrically heated homes and \$425 for the initial assessment of non-electric homes. Owners of non-electric homes will be provided with the option to finance the cost of their follow up visit; currently \$150. This fee structure is subject to change in accordance with current home

energy assessment pricing as dictated by Efficiency One for electrically heated homes and by Clean Foundation for non-electrically heated homes;

- (c) \$200 per savings-to-debt assessment completed pursuant to paragraph 2.01(d) above;
- (d) \$75 for evaluation of each supplemental assessment contemplated by paragraph 2.01(e) above;
- (e) Reimbursement for contractor invoices paid pursuant to paragraph 2.01(f) above; and
- (f) \$100 per home for processing of contractor invoices.

4.03 Invoicing and payment for services rendered under this Agreement shall proceed as follows:

- (a) On or before the 7th Business Day following the end of each calendar month during the Term, Clean Foundation shall deliver an invoice to the Municipality for all administrative fees due pursuant to section 4.01 above in respect of the preceding calendar month during the Term;
- (b) On a weekly basis Clean Foundation shall deliver an invoice to the Municipality for contractor payments due pursuant to section 4.01 above;
- (c) At the start of year one Clean Foundation shall deliver an invoice to the Municipality for onboarding fees basis pursuant to section 4.01 above; and
- (d) The Municipality shall pay the full amount of each invoice delivered by Clean Foundation within 30 days of the invoice date.

ARTICLE 5. RISK MITIGATION

5.01 Commercial Liability and Automobile Insurance

- (a) Clean Foundation shall, at its sole cost and expense, procure, maintain, pay for and keep in full force and effect for the entire duration of the project, Commercial General Liability Insurance against claims for bodily injury including death, personal injury and property damage including loss of use thereof. Prior to the commencement of any work, Clean Foundation shall provide a Certificate of Insurance to the Municipality evidencing commercial general liability in the minimum amount of \$2,000,000 naming the Municipality as additional insured and shall include cross liability and severability of interest clauses. The per occurrence deductible shall not exceed \$2,500, or in the case of a per claimant deductible, the deductible amount shall not exceed \$1,000. The certificate will also name the facilities/projects subject to this agreement and

contain a 30 day notice period of cancellation or material change detrimental to the Municipality.

- (b) Coverage for all operations and liability assumed under the contract shall include but not be limited to the following:
 - (i) Products & Completed Operations
 - (ii) Blanket Contractual
 - (iii) Pollution for a Hostile Fire
 - (iv) Broad Form Property Damage
 - (v) Employees as Additional Insured's
 - (vi) Contingent Employer's Liability
 - (vii) Non Owned Automobile Liability
 - (viii) Written on an occurrence form
- (c) Clean Foundation shall also provide the Municipality with a certificate of insurance evidencing vehicle insurance with minimum limits of \$2,000,000 for third party liability on all owned and operated vehicles.
- (d) Clean Foundation shall take out and keep in force Professional Liability (Errors and Omissions) insurance in the amount of \$1,000,000 minimum providing coverage for acts, errors and omission arising from their professional services performed under this Tender. The policy SIR/deductible shall not exceed \$5,000 per claim and if the policy has an aggregate limit, the amount of the aggregate shall be double the required per claim limit. The policy shall be underwritten by an insurer licensed to conduct business in the Province of Nova Scotia and acceptable to the Municipality. If policy is to be cancelled or non-renewed for any reason, 90 day notice of said cancellation or non-renewal must be provided to the Municipality. A certificate of insurance evidencing renewal is to be provided each and every year.
- (e) The insurance coverage must be maintained in force throughout the term of the agreement, and, if applicable, any renewal after, with evidence by way of a certificate of insurance provided to the Municipality yearly 10 days prior to the expiry of the insurance coverage. It is the responsibility of Clean Foundation to have this information provided to the Municipality.

5.02 Workplace Safety and Insurance Board

- (a) Clean Foundation shall provide the Municipality with a current WCB Clearance Letter. It is Clean Foundation's responsibility to provide current clearance letters to the Municipality for the duration of the Project or contract term.
- (b) Clean Foundation shall be fully responsible for ensuring contractors have workers' compensation insurance in place covering their own employees and general commercial liability insurance coverage with a limit of not less than \$2,000,000 per occurrence. Clean Foundation shall obtain proof that such insurance is in place. The proof may take the form of an insurance certificate, issued by the contractor's Broker or Insurer

5.03 Indemnity:

- (a) Clean Foundation (the "indemnifying party"), shall indemnify, defend and hold harmless the Municipality and its subsidiaries, affiliates, employees, and successors and assigns from and against, and in respect of, any and all actions, claims, suits, judgments, damages, liabilities, losses, penalties, costs and expenses (including, without limitation, legal fees and disbursements) of every kind whatsoever (collectively, "Damages") arising in any manner out of or from, or in connection with, any actual or alleged (i) patent, copyright, or trademark infringement, or violation of any other proprietary right, arising out of the use of the indemnifying party's brand and logos; (ii) breach by the indemnifying party of any term or provision of this Agreement; (iii) personal injury, wrongful death or property damage arising out of or relating to any products or any services provided by the indemnifying party pursuant hereto; and (iv) wrongful or negligent acts or omissions by the indemnifying party and its officers, directors, employees, and agents. This indemnification shall survive the expiry and/or termination of this Agreement.

ARTICLE 6. CONFIDENTIALITY AND PROTECTION OF PRIVACY

6.01 Providing this service involves the collection, use and disclosure of some personal information about Participants, in order to protect this personal information:

- (a) The purpose(s) for collecting personal information will be expressly communicated, either orally or in writing, at the time of collection or before the information is collected. The use of personal information collected will be limited to the purposes communicated to the Participant;
- (b) Participant information will only be disclosed where necessary to fulfill the purposes identified at the time of collection. Clean Foundation will not use or disclose Participant, member or volunteer personal information for any additional purpose unless we obtain consent to do so;
- (c) Participant lists or personal information will not be sold to or shared with other parties;

- (d) Personal information provided will be kept no longer than is necessary to retain the information for legal or business purposes; and
- (e) Participants may access their personal information, subject to the exceptions listed in PIPEDA, or request a correction of their personal information.
- (f) Clean Foundation will adhere to the Municipality's policy on records management, retention, and destruction.

ARTICLE 7. PACE PROGRAM BY-LAW

- 7.01 The service provided will adhere to the legal framework and regulatory requirements set out by the Municipality's By-Law as well as by any provincial and national legislation and regulations that may relate to it.

ARTICLE 8. COVENANTS OF THE MUNICIPALITY

- 8.01 The Municipality shall follow the process recommended by Clean Foundation pursuant to section 2.01 above in the administration of the Program during the Term.
- 8.02 The Municipality agrees that Clean Foundation will retain intellectual property rights to any materials created by Clean Foundation for The Program, and therefore covenants not to disclose, use or permit the use of those materials by any other party after the Term of this Agreement without the prior express written consent of Clean Foundation.

ARTICLE 9. TERM AND TERMINATION

- 9.01 Clean Foundation may arrange for Customer Agreements to be signed until the close of business on March 31st, 2019. Each day between the date of this Agreement and that day shall be part of the "**Term**" of this Agreement. If the parties agree to renew or extend the Term of this Agreement, then each day between March 31st, 2019 and the expiration date that may be agreed upon from time to time shall also be part of the "**Term**" of this Agreement.
- 9.02 The parties acknowledge that Customer Agreements between eligible homeowner applicants and the Municipality may not be fully performed prior to the end of the Term. If Clean Foundation incurs costs or provides services after the Term, which relate to a Customer Agreement entered into during the Term, then the Town agrees to honour the payment terms set out in sections 4.01, 4.02, and 4.03 and above in relation to those Customer Agreements, even after the expiration of the Term.

ARTICLE 10. GENERAL PROVISIONS

- 10.01 **Amendment** - This Agreement may not be amended or modified in any respect except by a written agreement signed by the parties.
- 10.02 **Waiver** - No waiver by any party of any breach of any provision of this Agreement by any of the other parties shall take effect or be binding upon that party unless in writing

and signed by such party. Unless otherwise provided therein, such waiver shall not limit or affect the right of the party not in default with respect to any other breach.

10.03 **Severability** - If any article, section or any portion of any section of this Agreement is determined to be unenforceable or invalid for any reason whatsoever, that unenforceability or invalidity shall not affect the enforceability or validity of the remaining portions of this Agreement and such unenforceable or invalid article, section or portion thereof shall be severed from the remainder of this Agreement.

10.04 **Enurement** - This Agreement shall enure to the benefit of and be binding upon the parties and their respective heirs, executors, administrators, successors, legal representatives and permitted assigns.

10.05 **Execution by Counterpart** - This Agreement may be executed by any person who is from time to time to become a party hereto by signing a counterpart hereof, each of which counterpart so executed shall be deemed to be an original and such counterparts together shall constitute a single instrument.

IN WITNESS WHEREOF the parties have properly executed this Agreement the day and year first above written.

SIGNED, SEALED AND DELIVERED
in the presence of:

Witness:

Witness:

CLEAN NOVA SCOTIA FOUNDATION

Per: _____
Scott Skinner, Executive Director

DISTRICT/TOWN OF _____

Per: _____
_____, _____

Appendix A

One Time On-boarding Fee – \$13,300

Clean Foundation charges an onboarding fee which covers start-up year costs. These costs and services are limited to the start-up year only and include:

- Pilot meetings:
 - Two in-person meetings at the municipal office.
 - One to agree on the processes for invoicing and sharing program documents as well as reviewing the frequently asked questions.
 - One to discuss pilot project evaluation at, or near, the pilot project year end.
 - 3-4 telephone conference meetings to finalize program details and processes.
- Design CEF program for the municipality.
- Create, review and finalize CEF agreement between Clean and the Municipality.
- Consult with municipality regarding program parameters (number of homeowners, loan amount, eligible upgrades, etc.).
- Customization of Customer Agreement, & Registration forms.
- Develop tracking system for participant files.
- Quarterly updates on participant progress.
- Pilot year evaluation will include interviews with participants and municipal administrators and a report of the overall pilot year.

This onboarding fee also contains a turn-key communications & marketing package that includes:

- The Clean Energy Financing logo with the name of the local municipality incorporated in it, in horizontal and vertical formats. (And we will include visual identity guidelines with colour palette and fonts.)
- Municipal webpages on the CleanEnergyFinancing.ca website
- 30 to 60 second video ad
- Municipality branded Clean Energy Financing promotional materials, specifically:
 - Posters (in vertical and horizontal formats) (electronic copy as well as 100 print colour copies)
 - Rack card handout (electronic copy as well as 500 print colour copies)
 - Power Point Presentation template
- A locally branded Clean Energy Financing pop-up display
- Clean Energy Financing messaging guide
- Clean Energy Financing suggested social media posts
- Suggested PSA text
- Newspaper ad template

- Production and placement of two print ads in local newspapers/publications
- Radio ad suggested script
- Preparation and distribution of an introductory press release to all local media in the region
- Leverage HomeWarming outreach opportunities (for example, community meetings or trade fairs) and offer Clean Energy Financing as an option for appropriate audiences in your region.
- Writing of a print story (with photos) based on a local participant's experience in the program This will be tailored for local media and social media

* Please note if the municipality requires additional marketing services in subsequent years these will be an extra cost. However as part of this agreement, all marketing design files will be provided to municipality for use in future years.