

**AGREEMENT OF PURCHASE AND SALE**

**This Agreement made in duplicate, this \_\_\_\_\_ day of \_\_\_\_\_, 2022.**

**BETWEEN:**

**THE CITY OF FREDERICTON**, a municipal corporation by virtue of the *Local Governance Act*, S.N.B. 2017, C. 18, and amendments thereto, having its head office at 397 Queen Street, Fredericton, New Brunswick, E3B 1B5, hereinafter called the “Vendor”;

**-AND-**

**HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF NEW BRUNSWICK**, as represented by the Minister of Transportation and Infrastructure, having its head office at 250 King Street, Place 2000, Fredericton, New Brunswick, E3B 9M9, hereinafter called the “Purchaser”

**WHEREAS** the Vendor is the owner of the parcels of land located in the Vanier Industrial Park, in the City of Fredericton, County of York and Province of New Brunswick, being more specifically identified as SNB PIDs 60034196 and 60034188 which are outlined and identified on the sketch annexed hereto as Schedule “A” (the “City Property”);

**AND WHEREAS** the Vendor has agreed to sell to the Purchaser and the Purchaser has agreed to purchase from the Vendor a ± 24.32-acre portion of the City Property which is generally outlined and identified as “Lot 22-1” on the tentative subdivision plan annexed hereto as Schedule “B”, such to be confirmed by final subdivision plan that is agreeable to both parties to this Agreement and subject to the terms and conditions herein contained, including the construction of a Future Street by the Vendor (the “Development Property”);

**AND WHEREAS** the Purchaser intends to develop a correctional centre on the Development Property (the “Facility”);

**AND WHEREAS** the Parties have agreed to the general terms and conditions related to the proposed transaction via an Offer Letter from the Vendor to the Purchaser dated November 1, 2022, and the Letter of Intent from the Vendor to the Purchaser dated November 2, 2022, which the parties acknowledge form part of this transaction;

**AND WHEREAS** the Parties acknowledge that this Agreement shall be subject to the final approval of City Council for the Vendor and the Lieutenant-Governor in Council for the Province of New Brunswick and/or Minister of Transportation and Infrastructure for the Purchaser.

**NOW THEREFORE THIS AGREEMENT WITNESSETH THAT** in consideration of the sum of \$1.00 (One Dollar) and other valuable consideration now paid by the Purchaser to the

Vendor, the receipt of which sum is hereby acknowledged, the Vendor hereby agrees to sell to the Purchaser and the Purchaser hereby agrees to purchase from the Vendor the Development Property, subject to the terms and conditions herein contained.

**1. THE DEVELOPMENT PROPERTY**

1.1 The Vendor agrees to sell to the Purchaser and the Purchaser agrees to purchase from the Vendor all of the Vendor's right, title and interest in and to the Development Property subject to the terms and conditions herein contained.

**2. PURCHASE PRICE AND METHOD OF PAYMENT**

2.1 The purchase price shall be the amount of One Million and One Hundred Thousand Dollars (\$1,075,000) plus HST if applicable (the "Purchase Price").

**3. ADJUSTMENTS**

3.1 Adjustments shall be made on the Closing Date for all items normally adjusted between a vendor and purchaser in respect of the sale of vacant property similar to the Development Property, including, without limitation and to the extent applicable to this transaction, realty taxes, local improvement rates, and municipal liens.

3.2 If the final cost or amount of an item which is to be adjusted cannot be determined at closing, then an initial adjustment for such item shall be made at closing, such amount to be estimated by the parties hereto acting reasonably as of the Closing Date on the basis of the best evidence available at the closing as to what the final cost or amount of such item will be. All outstanding items will be subject to final adjustment One Hundred and Twenty (120) days following the Closing Date.

**4. CLOSING**

4.1 Subject to any other provisions contained herein and provided the conditions for closing as outlined herein are met, this transaction shall be completed on March 31, 2023, or such earlier or later date as the Parties may mutually agree to in writing (the "Closing Date").

4.2 This Agreement shall be completed at such time as the Parties may mutually agree upon on the Closing Date in the office of the Solicitors for the Vendor, or other agent designated by the Vendor, or at such other place or time as the Parties may mutually agree to in writing. Delivery of documents or money hereunder may be made upon the Vendor or the Purchaser or their respective solicitors on the Closing Date.

**5. DEVELOPMENT PROPERTY**

5.1 The Purchaser shall have sixty (60) days from the date of execution of this agreement, which shall be referred to as the "Due Diligence Period", to satisfy itself that:

- (a) the title to the Development Property is good and free from restrictions, mortgages, charges, liens and encumbrances except as otherwise specifically provided in this Agreement and save and except for:
  - (i) any registered restrictions or covenants that run with the Development Property, provided that such have been complied with,
  - (ii) any registered municipal agreements and agreements with publicly regulated utilities, provided that such have been complied with,
  - (iii) any easements and rights-of-way, provided that such have been complied with,
  - (iv) any qualifications, reservations, provisos and limitations contained in or imposed by any applicable statute and/or any authority having jurisdiction over the Development Property provided that such have been complied with,
  - (v) any discrepancies in title or possession which would be disclosed by an up-to-date survey.

The parties hereto acknowledge and agree that from the time of execution of the within Agreement to the Closing Date, the Vendor shall not cause to be registered any of the documents contemplated in paragraph 5.1(a)(i) through (iv) inclusively without consent of the Purchaser;

- (b) there are no outstanding orders, deficiency notices or directives issued by any federal, provincial or municipal authority affecting the Development Property; and
- (c) upon execution of this agreement, the Purchaser may enter upon the Development Property for the purpose of conducting testing and investigations to determine that the soil and environmental conditions of the Development Property (including, without limiting the generality of the foregoing, all geotechnical and environmental concerns with respect to the Development Property) are satisfactory for the intended use by the Purchaser, and for that purpose, the Purchaser shall, at its own expense, have the right to enter upon the Development Property at any time or times forthwith following the execution of this Agreement following notice in writing to the Vendor for the purpose of making such soil and other tests and inspections as are required by the Purchaser.
- (d) Further the Vendor agrees that the Purchaser may enter onto the Development Property prior to closing (but after planning approvals are received) to clear the property. Access to the Development Property shall be shown as highlighted on the attached Schedule "C". The Purchaser shall be responsible for the costs associated with gaining access to the Development Property for the purpose of clearing the land.
- (e) In the event that for any reason the Facility is not going to be constructed and completed on the Development Property, the Purchaser shall rehabilitate the Development Property as much as reasonably possible to its pre closing condition. This includes demolishing and removing all material so that the property is in marketable condition. The Parties shall enter into a License Access Agreement establishing the terms and conditions for access.

5.2 If, within the Due Diligence Period, the Purchaser notifies the Vendor or the Vendors' Solicitors of any valid objection to title or to any outstanding environmental conditions, order, deficiency notice or directive or to the fact that the present use of the Development Property may not be lawfully continued and which the Vendors are unable or, in their discretion, determine not to remove, remedy or satisfy and which the Purchaser will not waive, this Agreement shall, notwithstanding any intermediate acts or negotiations in respect of any such matter, be at an end, the Deposit returned, and the Vendor shall not be liable for any costs or damages or other claims. Save as to any valid objection so made within the Due Diligence Period, and except for any objection going to the root of the title, the Purchaser shall be conclusively deemed to have accepted the Vendors' title to the Development Property. The Purchaser may raise objections going to the root of title on the Development Property up to the Closing Date.

5.3 Subject to Sections 5.1 and 5.2, the Vendor covenants and agrees to discharge any registered liens, mortgages or charges (excluding any easements required for servicing and/or utilities as per s. 5.1(a)) affecting the Development Property at its own expense on or before the Closing Date.

5.4 The Purchaser shall not call for the production of any title deed, abstract, survey or other evidence of title to the Development Property except as are in the control or possession of the Vendor. Notwithstanding the foregoing and subject to s. 6.2(d) herein, the Vendor shall provide a final subdivision plan, in a form ready for registration, confirming the dimensions of the Development Property and showing the alignment of the future road from Blizzard Street. However, the Purchaser shall be solely liable for the cost of any additional survey, surveyor's description or reference plan of the Development Property that may be required in connection with the further development of the Facility. The Vendor agrees that it will deliver the final subdivision plan as soon as practicable, and in any event, at least two weeks prior to the last day allowed for examining title to the Development Property.

5.5 The Vendor, upon the request of the Purchaser, shall forthwith deliver letters in a form satisfactory to the Purchaser addressed to such governmental authorities as may be reasonably requested by the Purchaser or its solicitors authorizing the release of any information as to compliance matters which such governmental authorities may have pertaining to the Development Property; provided, however, that nothing herein contained shall be deemed to authorize or permit the Purchaser to request any governmental or municipal inspections of the Development Property. If this Agreement is not completed the Purchaser shall keep any such information strictly confidential and shall not use it for any purpose whatsoever.

5.6 There is no condition, representation or warranty of any kind, express or implied, that the condition of the Development Property shall be appropriate for any particular use, unless expressly set out herein, or that the present use by the Vendor or the future intended use by the Purchaser is or will be lawful or permitted, or that any sketch or survey delivered by the Vendor to the Purchaser is complete or accurate, save and except the Subdivision Plan contemplated in paragraph 6.1(d) herein below. Without limiting the generality of the foregoing, this Agreement shall not be affected by any change in the zoning or use of the Development Property prior to completion. Other than the required zone amendment referred to below, the Vendor shall not apply for any change in zoning after the date of execution and prior to completion or termination of this

transaction, without the Purchaser's prior written approval or consent. The Vendor and the Purchaser acknowledge that the Development Property is being sold on an "as is" basis.

## **6. ACCEPTANCE, CONDITIONS AND RESTRICTIONS**

6.1 The Parties shall indicate the date on which each has executed this Agreement in the space provided immediately above the execution line and upon such execution of the last Party signatory being communicated to the other Party or its solicitors pursuant to Section 10, this Agreement shall become a binding agreement for the purchase and sale of the Development Property.

6.2 The Parties acknowledge and agree that the completion of the sale and purchase of the Development Property as contemplated by this Agreement is subject to the following terms, conditions, and understandings:

- (a) The Vendor and the Purchaser acknowledge that the Development Property is being sold on an "as is" basis;
- (b) The Vendor and Purchaser, as co-applicant, shall submit an application to the Planning Advisory Committee to subdivide the Development Property (from the parent parcels, the City Property), secure any variance(s) that may be required, or any such other planning approvals that may be required to create the Development Property for the Purchaser's intended use. For certainty, the parties acknowledge and agree that prior to the Closing Date, a zone amendment which would permit the operation of a correctional centre within the current General Industrial (GI) zoning that exists on the Development Property is required as a condition of closing, and if such zone amendment and land use approvals are not received, this transaction shall be null and void *ab initio*;
- (c) Further to s. 6.2(b), the parties acknowledge that this agreement and the transaction is subject to the Planning Advisory Committee's approval and conditions/recommendation, if any. If such approvals are not received from the Planning Advisory Committee and/or Fredericton City Council, the transaction shall be considered null and void;
- (d) Prior to the Closing Date, the Vendor shall, at its own cost and expense:
  - (i) engage a surveyor to confirm via subdivision plan the dimensions of the Development Property and required alignment of the future street, the final orientation of which shall be based on relevant planning and engineering considerations, and which shall be to both Parties' satisfaction, acting reasonably;
  - (ii) migrate the Development Property into Land Titles if necessary;
  - (iii) apply for approval for the planning approvals required to subdivide/create the Development Property parcel, the Future Street, and complete the Zone Amendment to permit the intended use of the Development Property as a Correctional Facility; and
  - (iv) if necessary, apply for any environmental permissions or approvals that may be required to create the Development Property, build the future street, and service the

Development Property, and

- (v) if such approvals are not received, the transaction shall be considered null and void;
- (e) Subject to receiving all required permits or approvals as may be required above, the Vendor shall, by end of 2023, or such other date as agreed to by the Parties in writing (the “Servicing Date”), complete the following servicing/infrastructure work (the “Work”) at its sole cost and discretion in order to service the Development Property and prepare it for construction of the Facility to be constructed by the Purchaser:
  - (i) construct a public street at a location heading northwest from the side of the Development Property to meet Blizzard Street as generally shown as the “Future Street” on Schedule “B”; and
  - (ii) service the street referred to above and determine the specifications and distance that local government services (water/sanitary) will be extended,
- (f) The Parties acknowledge and agree that should the Vendor not complete the Work by the Servicing Date, the Purchaser may, at its option: 1) agree to extend the Servicing Date to a future date to be negotiated between the parties acting reasonably and in good faith, or 2) exercise a right to reconvey the land back to the Vendor, free from encumbrances, for the amount paid by the Purchaser;
- (g) The Purchaser agrees, within 3 years of the Closing Date or such other date as is agreed to by the Parties in writing, to have started on the construction of the Facility (the “Construction Commencement Date”). The Parties acknowledge and agree that should the Purchaser not commence construction (for the purposes of this section commence construction means the commencement of pouring of foundations required for the main correctional building) by the Construction Commencement Date, the Vendor may, at its option: 1) agree to extend the Construction Commencement Date to a future date to be negotiated between the parties acting reasonably and in good faith, or 2) exercise a right to reacquire the Development Property back from the Purchaser, free of encumbrances, for the amount paid by the Purchaser;
- (h) The successful completion of the Work shall be subject to force majeure. For the purposes of this agreement, force majeure means: any failure or delay in performing an obligation under this Agreement that is due to any of the following causes, to the extent beyond its reasonable control: acts of God, accident, riots, war, terrorist act, epidemic, pandemic (including the Covid-19 pandemic), quarantine, civil commotion, natural catastrophes, governmental acts or omissions, changes in laws or regulations, national strikes, fire, explosion, or generalized lack of availability of required construction materials, or lack of availability of labour force/skilled trades necessary to complete;
- (i) The Purchaser shall, at its sole cost and risk, be responsible for clearing the Development Property after the Closing Date (such to be done with the Vendor’s approval and provided that the Purchaser has indicated that it intends to proceed with the development of the Correctional Facility), and for connecting any required future private servicing of the Development Property from the final location of the service lines in the future street to the desired areas for the Facility

development, stubbing into the service mains at a location that is to be determined by the Parties, acting reasonably and in good faith;

- (j) The Parties acknowledge that this property transaction requires the authorization and approval of the Council of the City of Fredericton as well as the Lieutenant-Governor in Council for the Province of New Brunswick and/or the Minister for the Department of Transportation and Infrastructure; and
- (k) The parties acknowledge that after the Purchaser's construction and prior to the Purchaser taking occupancy of the Facility, an alternate emergency access route is required as shown generally on Schedule C. The Parties shall work together in good faith in determining an alternate emergency access route from the Development Property. The emergency access route shall be available and maintained on a twenty-four-hour basis. The Parties shall act reasonably and in good faith and shall collaborate in determining the final and best location and orientation options for the emergency access route, as well as the costs associated therewith.

## **7. OBLIGATIONS ON CLOSING – THE VENDOR**

7.1 The Vendor shall execute and deliver to the Purchaser on or before the Closing Date, the following:

- (a) Transfer or Deed - such transfer in registerable form as may be required to transfer to the Purchaser all of the Vendors' right, title and interest in the Development Property;
- (b) Statement of Adjustments - a statement of adjustments;
- (c) Vendor's Certificate - a certificate of the Vendor confirming that it is registered under the Harmonized Sales Tax provisions of the *Excise Tax Act* and the Vendor's registration number shall be provided therein;
- (d) Resolution – if required, a certified copy of the appropriate resolution of the Vendor approving and authorizing the disposal of the Development Property, copies of which shall be attached to the Statement of Adjustments; and
- (e) Other – any other documents specifically referred to in this Agreement relative to the completion of this Agreement, together with any other documents relative to the completion of this Agreement as may reasonably be required by the Vendor and the Vendor's Solicitor, acting reasonably, or by the Purchaser and the Purchaser's Solicitors, acting reasonably.

7.2 All of the documents referred to in Section 7.1 shall be prepared by the Vendor's Solicitor at the Vendor's expense, unless otherwise specifically stated in this Agreement.

## **8. OBLIGATIONS ON CLOSING – THE PURCHASER**

8.1 The Purchaser shall execute and deliver to the Vendor on the Closing Date the following:

(a) Purchase Price – pay the Purchase Price; subject to such terms, conditions and practice customary to such payment, as the Parties or their solicitors may further agree in writing, and such amount to be payable to the Vendor or Vendor’s Solicitor, or as the Vendor may otherwise direct, subject to the adjustments set forth in Section 3.1 and consistent with the Statement of Adjustments provided for in Section 7.1(b);

(b) Other - any other documents specifically referred to in this Agreement relative to the completion of this Agreement, together with any other documents relative to the completion of this Agreement as may reasonably be required by the Vendor and the Vendor’s Solicitor, acting reasonably, or by the Purchaser and the Purchaser’s Solicitors, acting reasonably.

8.2 All of the documents referred to in Section 8.1 shall be prepared by the Purchaser’s Solicitor at the Purchaser’s expense, unless otherwise specifically stated in this Agreement.

**9. RISK**

9.1 Until the Closing Date and completion of the sale of the Development Property, the Development Property shall be and remain at the risk of the Vendor.

**10. NOTICE**

10.1 Any notice, approval or other communication required or permitted to be given hereunder ("Notice") shall be in writing and shall be sufficiently given if personally delivered or if sent by prepaid registered mail or if transmitted by facsimile:

Notice to Vendor:

The City of Fredericton  
397 Queen Street  
Fredericton, NB E3B 1B5  
Attn: Manager of Real Estate

Notice to Purchaser:

Department of Transportation  
250 King Street, Place 2000  
Fredericton, NB E3A 3L7  
Attn:

with a copy to the Solicitor of each party.

Vendor’s Solicitor:

Attn: T. Ryan Seymour  
Tel: (506) 460-2637  
E-mail: Ryan.Seymour@Fredericton.ca

Purchaser’s Solicitor:

Attn: Karen L. Caverhill  
Tel: (506) 453-8301  
E-mail: [karen.caverhill@gnb.ca](mailto:karen.caverhill@gnb.ca)

10.2 Any Notice so given shall be deemed conclusively to have been given and received if personally delivered, if sent by facsimile or if sent by electronic mail on the day such Notice was delivered if delivered on a Business Day and deemed to have been received on the next Business Day if such delivery was made on a non-Business Day. Any Notice sent by prepaid registered mail shall be deemed to have been delivered on the third (3<sup>rd</sup>) Business Day following the date of mailing, provided that for such purposes no day during which there shall be a strike or other



occurrence which shall interfere with normal mail service shall be considered a Business Day. No such Notice shall be mailed during any actual or apprehended disruption of postal services.

10.3 Either Party may from time to time change its address for service by written notice to the other Party by providing notice as stipulated under this section.

## **11. MISCELLANEOUS**

11.1 This Agreement shall constitute the entire agreement between the Parties and there are no other terms, obligations, covenants, representations, warranties, statements or conditions, oral or otherwise (including statutory), of any kind whatsoever except as set out in writing in this Agreement and all prior negotiations, proposals and writings pertaining to this Agreement or the subject matter hereof are superseded hereby.

11.2 This Agreement shall not be modified or amended except with the written consent of the Vendor and the Purchaser. In addition, no modification or amendment to this Agreement binds the Vendor or the Purchaser unless it is in writing and has been duly executed by both Parties.

11.3 This Agreement and everything relating hereto shall be construed and enforced in accordance with the laws of the Province of New Brunswick and the laws of Canada applicable therein.

11.4 Any provision of this Agreement which is determined to be void, prohibited or unenforceable shall be severable without invalidating, limiting or impairing the remaining provisions of this Agreement.

11.5 Time shall in all respects be of the essence hereof, provided that the time for doing or completing of any matter provided for herein may be extended or abridged in accordance with the terms of this Agreement or by an agreement in writing signed by the Vendor and the Purchaser or by their respective Solicitors who are hereby expressly appointed in this regard.

11.6 Neither the Vendor nor the Purchaser shall assign any of the obligations and rights under this Agreement without the prior written consent of the other Party.

11.7 This Agreement shall enure to the benefit of and be binding upon the Parties hereto and their respective heirs, successors and assigns.

11.8 This Agreement shall be read with all changes of gender or number required by the context.

11.9 This Agreement may be executed in several counterparts, each of which so executed shall be deemed to be an original and such counterparts together shall be one and the same instrument.

11.10 This Agreement may be executed by the Parties and transmitted by fax or other electronic means, and if so executed and transmitted this Agreement will be for all purposes as effective as if the Parties had executed and delivered an original Agreement.

11.11 The Parties acknowledge that they have read this Agreement in its entirety. The Parties

further acknowledge that they understand the terms and conditions herein contained and acknowledge that they have had the opportunity to obtain independent legal advice prior to signing this Agreement.

11.12 The Vendor and the Purchaser shall from time to time, and at all times, do or cause to be done, such further acts and execute and deliver, or cause to be executed and delivered, such further documents as shall be required in order for the Vendor and the Purchaser to fully comply with the requirements in respect to any HST imposed under any applicable legislation.

11.13 The Purchaser shall pay and be liable for all transfer taxes and other taxes applicable to or resulting from the transactions contemplated hereby, together with all filing, registration or recording charges or fees payable in connection with the filing or registration of any deeds, transfers of land or other documents executed and delivered hereunder, excluding any income tax payable by the Vendor.

11.14 The Vendor and the Purchaser shall be responsible for their own legal counsel and related services that may be required, in connection with this Agreement.

*Signature pages to follow*

**IN WITNESS WHEREOF** the Vendor and Purchaser have caused this Agreement to be executed as of the dates herein below written.

**THE CITY OF FREDERICTON**

Per: \_\_\_\_\_  
Kate Rogers, Mayor

Date: \_\_\_\_\_

Per: \_\_\_\_\_  
Jennifer Lawson, City Clerk

Date: \_\_\_\_\_

DRAFT

**SIGNED, SEALED AND DELIVERED**  
in the presence of:

**HIS MAJESTY THE KING IN RIGHT OF  
THE PROVINCE OF NEW BRUNSWICK as  
represented by the Minister of Transportation  
and Infrastructure**

\_\_\_\_\_  
Witness:

\_\_\_\_\_  
Per: Hon. Jeff Carr, Minister

Date: \_\_\_\_\_

DRAFT

Schedule "A"

The Property

Service New Brunswick

Service Nouveau-Brunswick



The City Property

Scale/Échelle 1:7998

Date: 2022/11/08 13:30:53





**Schedule “C”**

***Construction Access***

**[Note: to be confirmed and inserted]**

DRAFT

**PROVINCE OF NEW BRUNSWICK**

**COUNTY OF YORK**

**AFFIDAVIT OF CORPORATE EXECUTION**

I, **JENNIFER LAWSON**, of the City of Fredericton, in the County of York and Province of New Brunswick, **MAKE OATH AND SAY AS FOLLOWS:**

1. That I am the City Clerk of the City of Fredericton, one of the Parties named in the foregoing instrument and as such I have personal knowledge of the matters herein deposed to.
2. That the seal affixed to the foregoing instrument purporting to be the seal of the City of Fredericton is the Corporate Seal of the City of Fredericton and was so affixed by order of the City Council.
3. That the signature “Kate Rogers” subscribed to the foregoing instrument is the signature of Kate Rogers, the Mayor of the City of Fredericton, and the signature “Jennifer Lawson” subscribed thereto is my signature.
4. That the Mayor and City Clerk are the officers of the City of Fredericton duly authorized to execute the foregoing instrument.
5. That The City of Fredericton is a municipal corporation and has no share capital.

**SWORN TO BEFORE ME** at the )  
 City of Fredericton, in the County )  
 of York and Province of New )  
 Brunswick, this \_\_\_\_ day of )  
 \_\_\_\_\_, 2022. )

\_\_\_\_\_  
 Alexa Donovan )  
 A Commissioner of Oaths )

\_\_\_\_\_  
 Jennifer Lawson



**PROVINCE OF NEW BRUNSWICK**

I, \_\_\_\_\_, of the City of Fredericton, in the County of York and Province of New Brunswick, MAKE OATH AND SAY:

1. I am a \_\_\_\_\_ with the Department of Transportation and Infrastructure, and have a personal knowledge of the matter and things herein deposed to.
  
2. The within Instrument was executed by Hon. Jeff Carr, Minister of Transportation and Infrastructure, of the Province of New Brunswick; that the signature of Jeff Carr set and subscribed to the said Instrument as that of the Minister of Transportation and Infrastructure is the signature of the said Jeff Carr and was subscribed thereto in my presence.

**SWORN TO** at the City of Fredericton in the County of York and Province of New Brunswick this \_\_\_\_ day of \_\_\_\_\_ 2022

BEFORE ME:

\_\_\_\_\_  
A Commissioner of Oaths  
My Commission expires on  
\_\_\_\_\_

\_\_\_\_\_