

THIS AGREEMENT, made in duplicate, as of the ____ day of December 2020.

BETWEEN

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF NEW BRUNSWICK AS REPRESENTED BY THE MINISTER OF NATURAL RESOURCES AND ENERGY DEVELOPMENT (hereinafter referred to as “DNRED”)

AND

THE CITY OF FREDERICTON, a local government under and by virtue of the *Local Governance Act*, SNB, c. 18, having its head office at 397 Queen Street, Fredericton, New Brunswick (hereinafter referred to as the “City”)

(each a “Party”, collectively the “Parties”)

WHEREAS the Province of New Brunswick has equipment (as defined herein) that is used and managed by the DNRED;

AND WHEREAS it would be beneficial for the City when providing their services to have the ability to use the DNRED equipment when a need arises;

AND WHEREAS it is the intent of this Agreement to establish the terms of an arrangement whereby the City may request DNRED equipment when operationally required;

NOW THEREFORE in consideration of the mutual covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties agree as follows:

ARTICLE 1 – DEFINITIONS

1.1 In this Agreement, the following terms in singular or plural form according to context, are defined as follows:

“Agreement” means this agreement, as amended from time to time, and all attachments and appendices hereto, including: Appendix “A” – DNRED List of Equipment Fredericton/Canterbury District (Region 3 West); Appendix “B” – Department of Natural Resources and Energy Development Office Locations (Contact Names & Phone Numbers); and Appendix “C” – Equipment Form

“DNRED” means the New Brunswick Department of Natural Resources and Energy Development.

“DNRED Operator” means a New Brunswick Department of Natural Resources and Energy Development employee who is trained and familiar with the Equipment.

“Equipment” means the equipment owned by DNRED and listed in the attached Appendix “A”.

“Swift Water Operator” means a DNRED employee who is certified as a swift water rescue boat operator.

“Member” means a City of Fredericton employee with the Fredericton Fire Department or the Fredericton Police Force.

ARTICLE 2 – PURPOSE AND SCOPE

- 2.1 The DNRED agrees to provide the Equipment listed in the attached “Appendix A” to the City on the terms and conditions contained in this Agreement.
- 2.2 The City agrees to use the Equipment on the terms and conditions contained in this Agreement while Members are carrying out their job-related duties such as but not limited to fire rescue and search and rescue of persons.

ARTICLE 3 – TERM

- 3.1 Notwithstanding the date signed, this Agreement shall be for a term of five (5) years, commencing on March 1, 2020 and expiring on February 28, 2025, (the “Term”), unless terminated or extended as provided for herein.
- 3.2 This Agreement may be extended by mutual consent of the Parties, acknowledged in writing, for one (1) additional five year term upon the same terms and conditions. The extended term would commence on March 1, 2025 and would expire on February 28, 2030 (“Extension Term”).
- 3.3 This Agreement may be terminated, prior to the Term or Extension Term ending, by either Party for any reason upon sixty (60) days written notice of intention to terminate to the other Party.
- 3.4 The Parties acknowledge and agree that termination of the Agreement does not release a Party from any or all obligations which accrued while this Agreement was in force.

ARTICLE 4 – DNRED OBLIGATIONS

- 4.1 The DNRED shall prepare and provide the City with a detailed inventory list of all Equipment, including the make, model, serial number and condition, on an annual basis.
- 4.2 The DNRED shall, at its sole cost and expense, maintain the Equipment in good working order and shall ensure that regular maintenance and inspection of the Equipment is completed annually or as required.
- 4.3 The DNRED shall designate employees who will receive requests for the Equipment from the City. The DNRED office locations, contact names and phone numbers are outlined on the attached Appendix “B”. Upon receipt of a request from the City, the designated DNRED employee shall, when reasonably expedient to do so:
- (a) provide the City with the Equipment;
 - (b) if requested by the City, assign a trained DNRED Operator to run the Equipment including a Swift Water Operator for all boats excluding kayaks;
 - (c) shall advise the Member if the Equipment is available at the requested location and shall assist the Member in obtaining the requested Equipment if it is situated at an alternate location.
- 4.4 In providing DNRED operators for the Equipment, the DNRED shall, in their sole discretion and determination, decide when their operators can run the Equipment and when they cannot, such as but not limited to, conditions where ice in the river inhibits Equipment operation or operator safety.
- 4.5 The DNRED shall, at its sole cost and expense, when reasonably expedient to do so, provide the following to the City:
- (a) twenty-four (24) hour access, availability and use of the Equipment to the City;
 - (b) a certified Swift Water Operator and safety equipment, if requested by the City;
 - (c) a safety briefing of all appropriate safety measures for the Equipment prior to deployment;
 - (d) training of its Swift Water Operators at a national level which shall also include regular on water training and certifications; and
 - (e) annual on water training twice per year. The training will be basic in nature to familiarize the City with DNRED staff, procedures and Equipment.
- 4.6 The DNRED shall, at their sole cost and expense,, complete and register with Transport Canada a Form 19 (Application for the Registration, Transfer or Renewal of a Government Owned Vessel(s) (Small Vessel Register) for the Valiant DR-750 watercraft Mercury (Zodiac) with Transport Canada.

ARTICLE 5 – CITY OBLIGATIONS

- 5.1 Members may request the use of the Equipment when operationally required to perform their job-related duties.
- 5.2 Requests for the Equipment will be submitted to the designated DNRED employee by the Chief or Deputy Chief of the Fredericton Fire Department or the Fredericton Police Force.
- 5.3 The City shall ensure that Members utilizing the Equipment are trained and familiar with the Equipment and that appropriate safety measures are used while the Equipment is being operated. In addition, the City shall use its best efforts to return the Equipment to its location in its original state.
- 5.4 If a Member is responsible for refueling Equipment only Premium unleaded fuel shall be used.
- 5.5 The City shall safeguard the integrity of the Equipment and will immediately notify the DNRED employee if the Equipment has been damaged. The City shall be responsible to cover all costs if the Equipment is damaged while in their custody or when stored off DNRED property as a result of a request for service.

If the damage is extensive and the Equipment cannot be repaired to its prior state, the City shall replace the Equipment with the same make and model. If the same make and model is not available, the current amortized/depreciated value of the Equipment will be acquired.

- 5.6 The Member or designate shall sign an Equipment Form prior to receiving the requested Equipment and will also complete an inspection report upon the return of the Equipment. A copy of the form is attached as Appendix “C”.
- 5.7 The Member shall contact the DNRED District Supervisor or designate (DNRED contact) when the Equipment requires servicing.
- 5.8 The City shall provide the DNRED with a copy of the Transport Canada Certificate of Register (Small Vessel Register) and a Bill of Sale (Form 6 – Transport Canada) for the Valiant DR-750 watercraft Mercury (Zodiac) to transfer ownership from the City to the DNRED.
- 5.9 The City shall during the Term or Term Extension at their own expense acquire and maintain a commercial general liability and auto liability insurance policy with respect to their business and the business carried on under this Agreement, including bodily injury, death and damage to property in the amount of at least Two Million Dollars (\$2,000,000.00). This insurance policy shall be procured from an insurance company licensed to do business in the Province of New Brunswick.

ARTICLE 6 – INDEMNIFICATION

6.1 The DNRED covenants to indemnify and save harmless the City and its employees, and officials from and against any and all actions, suits, proceedings, costs, charges, expenses, claims, demands, matters and things whatsoever and by whomsoever made, sustained, brought or prosecuted (“Claims”) which are in any manner based upon, occasioned by, attributable to or arising from anything done or suffered or omitted to be done by the Province of New Brunswick, including its employees of the DNRED or its employees, agents, contractors or subcontractors, and whether caused by negligence of the Province of New Brunswick or employees of the DNRED or its agents, contractors or subcontractors of any nature whatsoever and howsoever caused resulting from or relating to:

- (a) any breach, violation or non-performance by the DNRED of any covenant or obligation of the DNRED contained in this Agreement; and
- (b) any damage to property, either real or personal, and whether owned by the City, the Province or others (including any member of the public) howsoever occasioned, and includes costs and expenses to effect repairs to the Equipment, as a result of the operation of the Equipment by a DNRED Operator.

Notwithstanding, the DNRED shall have no obligation to provide indemnification in respect of any Claims to the extent the same arises as a result of a breach of this Agreement by or on behalf of the City or the negligence or willful act or omission of the City.

6.2 The City covenants to indemnify and save harmless the DNRED and its employees, agents, contractors, subcontractors and officials from and against any and all actions, suits, proceedings, costs, charges, expenses, claims, demands, matters and things whatsoever and by whomsoever made, sustained, brought or prosecuted (“Claims”) which are in any manner based upon, occasioned by, attributable to or arising from anything done or suffered or omitted to be done by the City or one or more of its employees, and officials whether caused by the negligence of the City or one or more of its employees, and officials of any nature whatsoever and howsoever caused resulting from or relating to:

- (a) any breach, violation or non-performance by the City of any covenant or obligation of the City contained in this Agreement; and
- (b) any damage to property, either real or personal, and whether owned by the City, the DNRED or others (including any member of the public) howsoever occasioned, and includes costs and expenses to effect repairs to the Equipment, as a result of the operation of the Equipment by a Member.

Notwithstanding, the City shall have no obligation to provide indemnification in respect of “Claims” to the extent the same arise as a result of a breach of this

Agreement by or on behalf of the DNRED or the negligence or willful act or omission of the DNRED.

6.3 The provisions of this article shall survive the termination of this Agreement.

ARTICLE 7 – ADDITIONAL TERMS AND CONDITIONS

7.1 Sections and Headings

The division of this Agreement into articles and sections and the insertion of headings are for convenience of reference only and shall not affect the interpretation of this Agreement.

7.2 Entire Agreement

This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether written or oral. There are no conditions, covenants, agreements, representations, warranties or other provisions, express or implied, collateral, statutory or otherwise, relating to the subject matter hereof except as herein provided.

7.3 Amendments

If at any time during the continuance of this Agreement the Parties shall deem it necessary or expedient to make any alterations or additions to this Agreement, they may do so by means of an executed written Agreement between them which shall be supplemental to and form part of this Agreement.

7.4 Applicable Law

The Parties acknowledge and agree that this Agreement shall be governed by, construed and enforced in accordance with the laws of the Province of New Brunswick and any federal laws of Canada applicable therein.

7.5 Severability

If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such determination shall not impair or affect the validity, legality or enforceability of the remaining provisions hereof, and each provision is hereby declared to be separate, severable and distinct.

7.6 Successors and Assigns

This Agreement shall endure to the benefit of and shall be binding on and enforceable by the Parties and, where the context so permits, their respective successors and permitted assigns. Neither Party may assign any of its rights or obligations hereunder without the prior written consent of the other Party.

7.7 Notice

All notices to be given pursuant to this Agreement shall be in writing and delivered personally or by courier or sent by facsimile as follows:

To the DNRED:

Hugh John Flemming Forestry Centre
PO Box 6000, Fredericton, NB E3B 5H1
Attention: Regional Director Operations
[Fax #: (506)444-4367]

To the City:

397 Queen Street
Fredericton, NB E3B 1B5
Attention: Fire Chief
[Fax #: (506) 460-2976]

Any such notice shall be deemed to have been given and received on the day on which it was personally delivered or transmitted or if such day is not a business day, on the next following business day or if mailed, on the third business day after the date of mailing.

7.8 Dispute Resolution

If the Parties hereto should have a dispute with respect to this Agreement, they shall first attempt to resolve such dispute between themselves, more specifically; the dispute shall be referred to their representatives set out above under Section 7.7 or their identified delegates, who will use their best efforts to resolve the matter amicably. If such negotiation fails, the Parties shall refer the matter to the following individuals for resolution:

For the DNRED:

Executive Director
Regional Operations
506-453-3826

For the City:

Chief Administrative Officer
The City of Fredericton
506-460-2090

If the Parties are unable to resolve the dispute in this matter within a reasonable time, then any dispute between the Parties hereto as to any matter arising under this Agreement shall be referred by the Parties to a single arbitrator to be jointly appointed by the Parties or to be selected by a Judge of the Court of Queen's Bench of New Brunswick on application of the Parties. Such arbitration will be conducted pursuant to the *Arbitration Act*, RSNB 2014, c. 100 of New Brunswick, as amended. It is further agreed that the Parties shall be solely responsible for their own costs associated with the dispute resolution process.

7.9 Monitoring

The Parties intend to review and assess the operation and effectiveness of this Agreement on an annual basis. Should it be deemed necessary, both Parties shall be invited and participate in any after action review resulting from a joint response to an incident involving the Equipment and/or an operator.

7.10 Force Majeure

The Parties shall not be responsible for any failure or delay in the performance of any obligations hereunder caused by acts of God, flood, fire, war, terrorism, blockade, strike, labour dispute, civil commotion, epidemic, pandemic, stop-work order, injunction or other causes beyond their reasonable control.

7.11 Right to Information and Protection of Privacy Act

The Parties acknowledge and understand they are subject to the *Right to Information and Protection of Privacy Act* (SNB 2009, c. R-10.6), and as such, disclosure and confidentiality obligations are governed thereunder.

7.12 Contra Proferentem Rule Not Applicable

Should any provision of this Agreement require judicial interpretation, mediation or arbitration, it is agreed that the court, mediator or arbitrator interpreting or construing the same shall not apply a presumption that the terms thereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agent prepared the same, it is agreed that both Parties, directly or through their agents, have participated in the preparation hereof.

7.13 Costs

It is acknowledged that each Party shall pay their own costs, charges and expenses of and incidental to the preparation of this Agreement.

7.14 Other

The Parties acknowledge and agree that they have had the opportunity to have this Agreement reviewed by their respective legal counsel.

7.15 Acknowledgments

Each Party acknowledges and agrees that it has the legal power and authority to enter into this Agreement and the signatory to this Agreement has been duly authorized to execute and deliver this Agreement to make it a valid and binding obligation, enforceable in accordance with its terms.

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PARTIES TO SIGN ON THE FOLLOWING PAGE

Appendix "A"
DNRED List of Equipment

Fredericton/Canterbury District (Region 3 West)

ATVs

283	1992	Honda	Fourtrax 300 4x4	XC5-714	Fredericton
380	1999	Yamaha	400 Kodiak	XJ0-137	Fredericton
16048	1999	Yamaha	400 Kodiak	XJ0-104	Canterbury
19962	2006	Yamaha	Kodiak 400	XP4-823	Fredericton
19963	2006	Yamaha	400 4x4 Kodiak	XP4-825	Fredericton
22342	2008	Polaris	Sportsman 500 4x4	XS1-092	Canterbury
22347	2009	Polaris	Sportsman 500 4x4	XS1-087	Fredericton
23126	2010	Polaris	Sportsman 500 4x4	XT5-254	Fredericton
23127	2010	Polaris	Sportsman 500 4x4	XT5-255	Fredericton
26395	2016	Can-Am	Outlander 570L	XY4 447	Fredericton

Snowmobiles

17041	2002	Ski-Doo	Scandic LT 440	XK7-966	Fredericton
17043	2001	Ski-Doo	Scandic LT 440	XK7-971	Canterbury
19423	2005	Ski-Doo	Tundra 280F	XO6-454	Canterbury
19424	2005	Ski-Doo	Tundra 280F	XO6-447	Fredericton
19434	2005	Ski-Doo	GTX 550F	XO6-450	Canterbury
22307	2009	Ski-Doo	Tundra 300F	XS1-111	Fredericton
22320	2001	Ski-Doo	Freestyle	XS1-124	Canterbury
22321	2009	Ski-Doo	Freestyle 550F	XS1-127	Fredericton
23110	2010	Ski-Doo	Tundra 550F	XT5-279	Fredericton
23115	2010	Ski-Doo	Tundra 550F	XT5-284	Fredericton

Boats

		Valiant DR-750 watercraft	Mercury (zodiac)	Fredericton HQ
		Kayak		Fredericton HQ
		Kayak		Fredericton HQ
9.9		Esposito S-140		Canterbury

115	Pro Craft Pike Hunter 180 18'	Canterbury
	Harber H-12g Aluminum	Canterbury
25	Princecraft 14'	Fredericton

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**Appendix “B”
Department of Natural Resources Office Locations**

Contact names and phone numbers for CITY OF FREDERICTON use of DNRED equipment during regular business hours are listed below.

To reach the Fredericton District Ranger Office dial 453-2345, if no answer OR after regular hours press 0 for the Provincial Mobile Communication Center (PMCC).

Fredericton District Office – 1350 Regent Street, 774 James Kid Flemming Circle

- *Dave Sellick, District Ranger*
- *Adam Sullivan, Ast. District Ranger*
- *Phillip Russell*
- *Matt Sparkes*
- *Natasha Ouellette*
- *Andrew Tingley*
- *Jenna Bullied*
- *Nicholas Leger*
- *Robin Green*
- *William Connell*
- *Kenda Cooper*
- *Sheldon Dow*
- *Nate Basque*
- *Travis Judd*

Swift Water Boat Operators:

- Adam Sullivan, Forest Ranger
- Natasha Ouellette, Forest Ranger
- Andrew Tingley, Forest Ranger
- Travis Judd, Forest Ranger

Note: *should these operators be unavailable, additional operators within Province will be contacted.*

DNRED Senior Leadership Contacts:

Neil Jacobson, Regional Director (461-5578, neil.jacobson@gnb.ca): Operational Designate to the DNRED Executive Director, Regional Operations

John Kennedy, Regional Manager (476-3126. John.kennedy@gnb.ca): Operational Designate to the Regional Director

Appendix "C"
Equipment Form

This form is to be signed by the Member and DNRED contact prior to (Check-Out) and upon return of (Check-In) equipment.

Check-Out

Date _____ Office Location _____

Equipment Type _____ Asset Number _____

Year _____ Make _____

Model _____ Serial Number _____

License Plate Number _____ Odometer Reading _____

Asset Condition Comments

DNRED Signature (print) _____ (sign) _____

THE CITY OF FREDERICTON Signature (print) _____ (sign) _____

Check-In

Asset Condition Comments

DNRED Signature (print) _____ (sign) _____

THE CITY OF FREDERICTON Signature (print) _____ (sign) _____

