

AGREEMENT OF PURCHASE AND SALE

This Agreement made in duplicate, this ____ day of _____, 2023.

BETWEEN:

HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF NEW BRUNSWICK AS REPRESENTED BY THE MINISTER OF TRANSPORTATION AND INFRASTRUCTURE having an office located at 440 King Street, Kings Place, Fredericton, New Brunswick, E3B 5H8, **hereinafter referred to as “DTI”**

-AND-

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 referred to as the “City”**

WHEREAS DTI is the owner of the parcel of land located in Fredericton, New Brunswick, and being more specifically identified as SNB PID 75549063 (the “DTI Property”);

AND WHEREAS the City is the owner of the parcel of land located in Fredericton, New Brunswick, and being more specifically identified as SNB PID 75549071 (the “City Property”);

AND WHEREAS DTI has agreed to convey three parcels of the DTI Property indicated as “Lot 23-1”, Lot 23-2”, and “New Street” on Schedule A (the “Sale Properties”) in exchange for the City conveying to DTI two parcels, PIDs 75544486 and 75530261, shown in Schedule B, to DTI (the “City Property”) (collectively the “Exchange Properties”) and additional financial consideration, subject to the terms and conditions contained herein;

AND WHEREAS the Parties acknowledge that this Agreement shall be subject to the final approval of Council for the City of Fredericton and the Lieutenant-Governor in Council for the Province of New Brunswick for DTI;

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT in consideration of the terms and conditions herein contained, DTI and the City agree as follows:

1. THE PROPERTIES

1 DTI agrees to sell the Sale Properties to the City, and the City agrees to purchase the Sale Properties from DTI for the Purchase Price. The parties acknowledge that PIDs 75544486 and 75530261, were previously conveyed to the Vendor by Transfer Dated March 8, 2022 and

registered on March 10, 2022 as instrument 42403486. Schedules A and B depict the Sale Properties and City Property, respectively.

2. PURCHASE PRICE AND METHOD OF PAYMENT

2.1 The Purchase Price for each of the Sale Properties shall be the sum of lawful money of Canada listed below (the "Purchase Prices") plus any applicable taxes and subject to adjustment.

- a. Lot 23-1: \$147,412.50
- b. Lot 23-2: \$147,412.50
- c. Future Street: \$0

2.2 The Purchase Prices shall be calculated based on a formula of \$25.00 per square metre for Lot 23-1 and Lot 23-2 and shall be adjusted to reflect a similar value for the value of City lands previously conveyed (PIDs 75544486 and 75530261). DTI agrees to convey the future street to the City for \$0. In return, the City agrees to build the Future Street heading to PID 75433300 with all required municipal services and infrastructure.

2.3 The Purchase Prices shall be payable by Cheque, to the Minister of Finance, or by such other means of payment as DTI may otherwise direct, on the Closing Date, subject to the adjustments stipulated within this Agreement.

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 property similar to the Sales Properties, including, without limitation and to the extent applicable to this transaction, realty taxes, local improvement rates, insurance, rentals, mortgage interest, municipal liens, water rates and fuel.

4. CLOSING

4.1 Subject to any other provisions contained herein, this Agreement shall be completed on August 1, 2023, or such earlier or later date as the Parties may mutually agree to in writing (the "Closing Date").

5. ACCEPTANCE, CONDITIONS AND RESTRICTIONS

5.1 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 this Agreement shall become a binding agreement.

5.2 The Parties acknowledge that the Due Diligence Period, as defined in Section 6, is calculated based on the date that this document becomes a binding agreement.

5.3 The Parties acknowledge and agree that the completion of the sale of the Sale Properties

and the City Property as contemplated by this Agreement is subject to and conditional upon the following understandings and undertakings:

- a. the City, at its sole cost and expense, engaging a surveyor to confirm the final dimensions of the Sale Properties and submitting the required application(s) to the Planning Advisory Committee to subdivide them as a single parcel and consolidate them with the adjacent City Property. By executing this Agreement, DTI consents to such application(s), however, DTI may provide required consents by alternative method acceptable to the Parties. The City will provide DTI with a final version of the tentative subdivision plan for DTI's review, consideration and approval prior to the PAC process;
- b. the City, at its sole expense, shall register the final Subdivision Plan to create the Sale Properties from parent PID 7554906;
- c. pending conversion of PID 75549089 to a full and public right-of-way, the City agrees to grant permission (either via an easement or a license agreement to be negotiated by the Parties acting reasonably and in good faith) to DTI across such parcel for the purposes of accessing the DTI Property from the existing and future Cuffman Street limits. For clarity, the Parties agree that any such access rights shall be extinguished at such time as the Cuffman Street to Murray Avenue public ROW is established. The parties acknowledge that there is currently no completed public ROW built to City standards and that, pending such, access across 75549089 shall be private and across whatever currently exists; the City is not required to provide any improvements to such corridor until such time it deems appropriate.
- d. the City shall be responsible for the construction of a public street heading northeasterly from Cuffman Street towards the adjacent parcel currently identified as PID 75433300 (and as generally shown as the "New Street" on Schedule A), and the final orientation of the ROW shall be at the discretion of the City and performed at such time as the City deems appropriate. Upon completion of the construction of the Future Street, the City shall grant DTI an 18 m wide easement for pedestrian and vehicular traffic across Lot 23-2, connecting the Future Street to the eastern limits of the DTI Property, the location and width of which shall be negotiated by the parties acting reasonably and good faith at such time (but as generally shown in Schedule C attached), and provided that DTI shall be responsible for any costs associated with the construction and creation of the easement corridor. Notwithstanding the foregoing, the City shall be permitted to proceed with the development of Lot 23-2 in its discretion provided that an appropriate easement corridor to the DTI site across Lot 23-2 is reserved for such future use.
- e. DTI and the City shall be responsible for their own legal counsel and related services that may be required in connection with this Agreement;
- f. DTI and the City acknowledge that the Exchange Properties are being sold on an "as is, where is" basis, and that neither party makes any representations or warranties whatsoever regarding the condition of the Exchange Properties, and the parties agrees to

indemnify, save harmless and release the other regarding any and all claims, damages, or causes of action of any kind regarding the Exchange Properties;

- g. All property agreements and transactions are subject to the Planning Advisory Committee's recommendation, if any, City Council's authorization and approval, and the Lieutenant-Governor in Council's approval; and
- h. DTI and the City satisfying and complying with all other terms and conditions contained herein.

6. DUE DILIGENCE

6.1 The City shall be allowed up to and including the Closing Date, which shall be referred to as the "Due Diligence Period", to satisfy itself that:

- (a) the title to the Sale Properties are 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 Sale Properties, 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 Exchange Properties provided that such have been complied with, (v) any discrepancies in title or possession which would be disclosed by an up-to-date survey; and
- (b) there are no outstanding orders, deficiency notices or directives issued by any federal, provincial or municipal authority affecting the Sale Properties.

6.2 If, within the Due Diligence Period, the City notifies DTI or their Solicitors of any valid objection to title or to any outstanding order, deficiency notice or directive or to the fact that the present use of the Sale Properties may not be lawfully continued and which the Parties are unable or, in their discretion, determine not to remove, remedy or satisfy and which the Parties will not waive, this Agreement shall, notwithstanding any intermediate acts or negotiations in respect of any such matter, be at an end. 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 Parties shall be conclusively deemed to have accepted the Parties' title to the property they are or have taken ownership of.

6.3 Subject to Sections 6.1 and 6.2, the Parties covenant and agree to discharge any registered liens, mortgages or charges affecting the City Property or the Sale Properties at their own expense on or before the Closing Date.

6.4 The City shall not call for the production of any title deed, abstract, survey or other evidence of title to the Sale Properties except as are in the control or possession of DTI. DTI agrees that it will deliver any sketch or survey of the Sale Properties in its control or possession to

the Parties as soon as practicable and prior to the last day allowed for examining title to the Sale Properties.

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

6.6 There is no condition, representation or warranty of any kind, express or implied, that the condition of the City Property or Sale Properties shall be appropriate for any particular use, unless expressly set out herein, or that the present use by the Parties or the future intended use by the Parties is or will be lawful or permitted, or that any sketch or survey delivered by the Parties is complete or accurate. Without limiting the generality of the foregoing, this Agreement shall not be affected by any change in the zoning or use of the Exchange Properties prior to completion.

7. SITE CONDITION

7.1 Subject to the Parties satisfying themselves with respect to the prior conditions stipulated in Section 5.3, the Parties agree to convey and accept the City Property and Sale Properties “as is”.

8. OBLIGATIONS OF DTI AND THE CITY ON CLOSING

8.1 The Parties shall execute and deliver to each other on or before the Closing Dates, the following:

- (a) Transfer (City Property) – such transfer in registerable form as may be required to transfer to DTI all of the City’s right, title and interest in the City Property;
- (b) Transfer (Sale Properties) – such transfer in registerable form as may be required to transfer to the City all of DTI’s right, title and interest in the Sale Properties;
- (c) Statement of Adjustments – a statement of adjustments prepared by the City;
- (d) HST Certificate – certificates of the Parties to indicate whether or not the Parties are registered under the Harmonized Sales Tax provisions of the *Excise Tax Act* and the Parties’ registration number shall be provided therein;
- (e) Corporate Resolutions – certified copies of any required corporate resolutions of the Parties approving and authorizing the disposal of the Exchange Properties; and

- (f) Easement/License – such document in registrable form as may be required to convey access rights to the DTI across PID 75549089 in order to provide access to the DTI Property from the current end of Cuffman Street, such easement to be extinguished and released at such time as PID 75549089 is vested as a full and public ROW/street.
- (g) Other – Such other documents specifically referred to in this Agreement relative to the completion of this Agreement and vacant possession of the Exchange Properties.

8.2 The documents referred to in Section 8.1 shall be prepared by the Solicitor for each Party at each Party's expense, unless otherwise specifically stated in this Agreement.

9. RISK

Not applicable.

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 the City:

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

Notice to DTI:

His Majesty the King in Right of
the Province of New Brunswick
as Represented by the Minister of
Transportation and Infrastructure
440 King Street, Kings Place
Fredericton, NB E3B 5H8

with a copy to the Solicitor of each party.

City's Solicitor:

T. Ryan Seymour
397 Queen Street
Fredericton, NB E3E 1E9

Tel: 506-460-2637

E-mail: ryan.seymour@fredericton.ca

DTI's Solicitor:

Karen Caverhill
Chancery Place, PO Box 6000
Fredericton, NB E3B 5H1

Tel: 506-453-8301

E-mail: 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 (3rd) 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 Parties. In addition, no modification or amendment to this Agreement binds the Parties 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 Parties or by their respective Solicitors who are hereby expressly appointed in this regard.

11.6 Neither Party 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 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.

11.10 The Parties 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 Parties to fully comply with the requirements in respect to any HST imposed under any applicable legislation.

11.11 Each Party shall pay and be liable for all transfer taxes and other taxes applicable to or resulting from the transactions contemplated herein, 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.

11.12 Each Party shall be responsible for their own legal fees relating to the transfer of the Exchange Properties.

11.13 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.

11.14 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.

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IN WITNESS WHEREOF the Parties have caused this Agreement to be duly executed on the date herein below written.

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

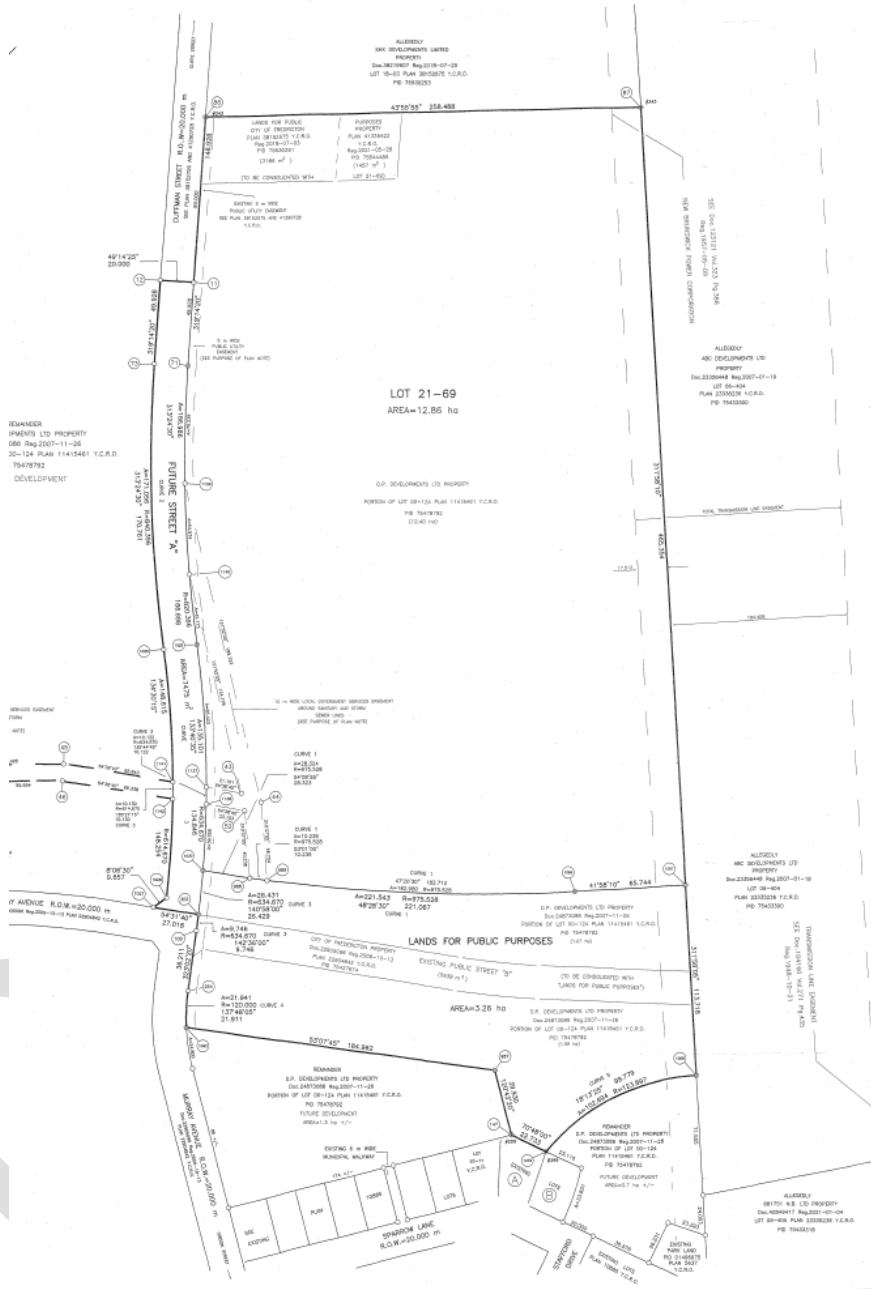
Hon. Jeff Carr
Minister of Transportation and
Infrastructure

CITY OF FREDERICTON, THE

Per: Kate Rogers, Mayor

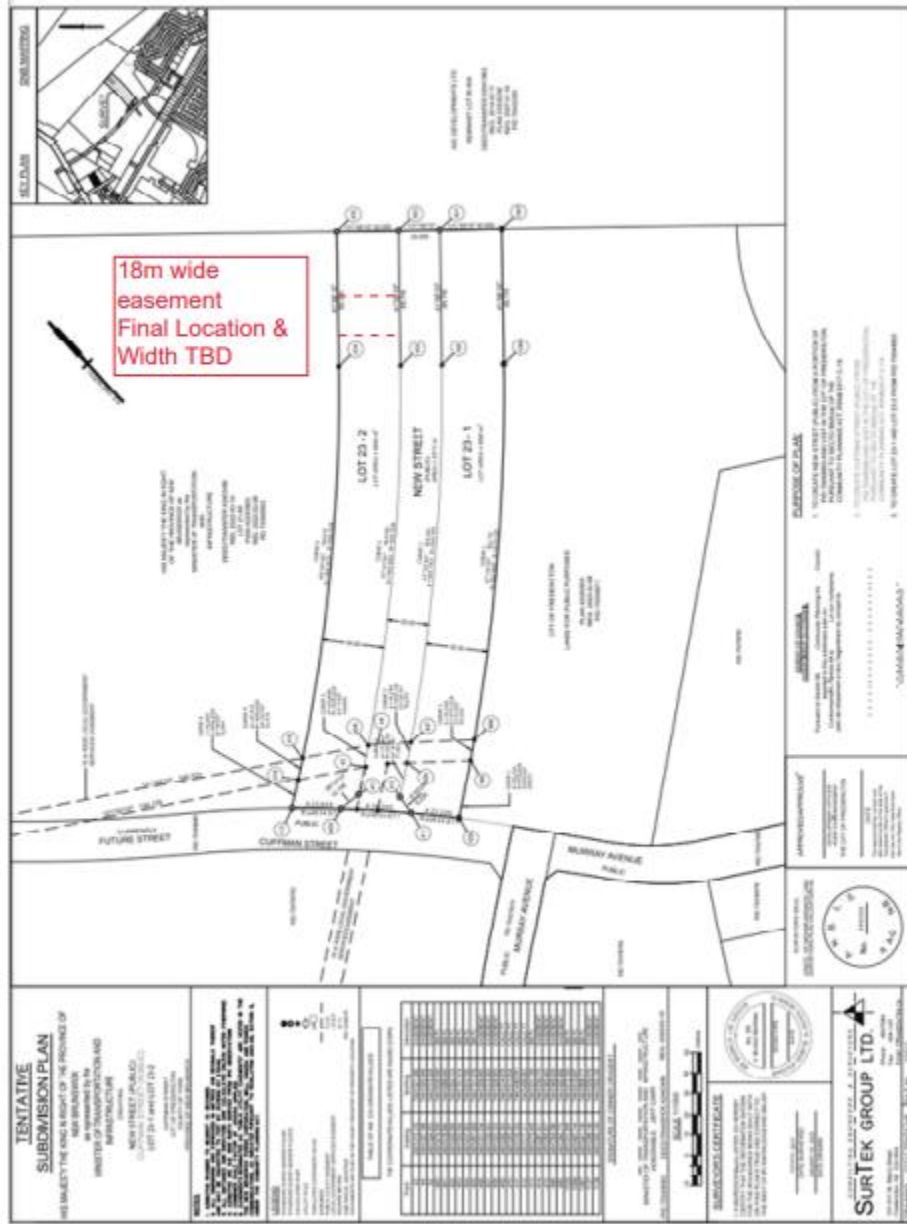
Per: Jennifer Lawson, City Clerk

Schedule "B" – The City Property and land previously conveyed



Schedule "C" – Tentative Access

[to be confirmed as outlined herein]



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)
_____, 2023.)

_____)
Alexa Donovan)
A Commissioner of Oaths)
My Commission Expires)
Dec. 31, 2026)

_____)
Jennifer Lawson