

AGREEMENT BETWEEN
THE CITY OF FREDERICTON
AND
THE STUDENTS' UNION OF ST. THOMAS UNIVERSITY, INC.

Regarding a universal bus pass program for full time and part time
students of St. Thomas University

September 1, 2021 to August 31, 2023

This Agreement made in duplicate this _____ day of April, 2021.

BETWEEN:

THE CITY OF FREDERICTON, a municipal corporation by virtue of the *Local Governance Act* having its head office at 397 Queen Street, City of Fredericton and Province of New Brunswick (hereinafter referred to as the "City");

-AND-

THE STUDENTS' UNION OF ST. THOMAS UNIVERSITY, INC., a duly incorporated company under and by virtue of the *Companies Act* having its head office in the City of Fredericton and Province of New Brunswick (hereinafter referred to as the "Students' Union");

(hereinafter referred to collectively as the "Parties")

WHEREAS the administration of St. Thomas University and the Students' Union originally requested in 2004 that the City provide enhanced transportation services to meet the transportation needs of their students, which included additional runs, extended hours or new routes to and from the University campus at a preferential price;

AND WHEREAS the Parties agreed and implemented a program called the Universal Bus Pass Program ("UBPP") since 2004;

AND WHEREAS the Parties all agree that the UBPP has been successful and would like the past arrangement to continue;

AND WHEREAS the Parties entered into several agreements for the UBPP which included full-time students as well as an opt-in option for part-time students;

AND WHEREAS the Parties are desirous of entering into a new two (2) year Agreement for the UBPP, which will include full-time students as well as an opt-in option for part-time students;

AND WHEREAS the UBPP shall continue to be valid for unlimited transportation on the regular fixed route transit and Para Transit systems of the City for full-time and those part-time students who individually opt-in to the UBPP who are enrolled with St. Thomas University;

AND WHEREAS Hotspot Parking Inc. ("HotSpot") has developed a digital solution, in the form of an App, to be used as valid digital transit passes ("Digital UPass");

AND WHEREAS the City and the Students' Union recognize and accept the Digital UPass;

AND WHEREAS the City operates a public transit system in the City of Fredericton and has agreed to provide such services, subject to the terms and conditions contained in this Agreement;

NOW THEREFORE in exchange of mutual covenants herein and other good and valuable consideration, the Parties hereby agree as follows:

1. Definitions

1.1 “Effective Date” means September 1, 2021.

“Full-time Student” means a person enrolled with St. Thomas University taking nine (9) credits or more per semester.

“Part-time Student” means a person enrolled with St. Thomas University taking fewer than nine (9) credits per semester and who has opted-in to the UBPP.

“RTIPPA” means the *Right to Information and Protection of Privacy Act* (SNB, 2009, c. R-10.6, as amended).

2. Term

2.1 This Agreement shall be for a term of two (2) years from the Effective Date until August 31, 2023. For greater clarity, there are two (2) academic years under the Term of this Agreement being September 1, 2021 to August 31, 2022 (“Year 1”) and September 1, 2022 to August 31, 2023 (“Year 2”).

Full or Partial Restriction

2.2 In the event that, pursuant to the ongoing mitigation of Covid-19, St. Thomas University (“STU”) fully or partially restricts attendance on the campus and offers alternate off-campus methods of learning to its students prior to the September 1 of either academic year commencing, the Parties agree and accept to extend this Agreement by one (1) year. Written notice of STU’s decision must be provided to the City no later than September 1 of the respective academic year for the extension to be effective.

2.3 In the event this Agreement is extended pursuant to Article 2.2 herein in 2021, there will be three (3) academic years covered under this Agreement being September 1, 2021 to August 31, 2022 (“Year 1A”), September 1, 2022 to August 31, 2023 (Year 1) and September 1, 2023 to August 31, 2024 (“Year 2”).

2.3.1 In the event this Agreement is extended pursuant to Article 2.2 herein in 2022, there will be two (2) academic years for the remainder of the Agreement being September 1, 2022 to August 31, 2023 (“Year 2”) and September 1, 2023 to August 31, 2024 (“Year 2B”).

2.3.2 In the event this Agreement is extended pursuant to Article 2.2 herein for both the 2021 and 2022 academic years, there will be one (1) academic year remaining in this Agreement, being September 1, 2023 to August 31, 2024 (“Year 3”).

2.4 In the event that this Agreement is extended pursuant to Article 2.2 herein, all terms and conditions contained in this Agreement will apply until August 31, 2024.

2.5 In the event that this Agreement is extended pursuant to Article 2.3 herein, Full-time Students and Part-time Students attending STU will have a choice to opt-in to the UBPP for Year 1A only. For greater clarity, the ability for Full-time Students to opt-in will be only

for the academic year between September 1, 2021 and August 31, 2022.

2.5.1 In the event this Agreement is extended pursuant to Article 2.3.1 herein, Full-time Students and Part-time Students attending STU will have a choice to opt-in the UBPP for Year 2 only. For greater clarity, the ability for Full-time Students to opt-in will be only for the academic year between September 1, 2022 to August 31, 2023.

2.5.2 In the event this Agreement is extended pursuant to Article 2.3.2 herein, Full-time Students and Part-time Students will have a choice to opt-in the UBPP in the 2021-2022 and 2022-2023 academic years only. For greater clarity, there will not be an opt-in ability for Full-time Students in the September 1, 2023 to August 31, 2024 academic year.

3. Services to be Provided by the City

3.1 The City shall provide transportation services for the Term of this Agreement to Full-time and Part-time Students with the Digital UPass or paper-based transit pass ("UPass").

4. Terms and Conditions Applicable to the Students' Union

4.1 The Students' Union executive will conduct a review of transportation performance at the end of the academic year, meet with the City on or before April 30th of the academic year and shall also provide their written review to the City. This review is not intended to deal with daily operational complaints or problems, but to review the overall performance of the City in relation to its students' needs in order to make suggestions for improvements to the system.

4.2 The Students' Union, in collaboration with St. Thomas University, shall disseminate information to Full-time and Part-time Students outlining how to obtain the annual Digital UPass using HotSpot.

4.3 The Students' Union shall communicate with Full-time and Part-time Students who have opted into the UBPP that refunds will not be issued in accordance with Article 6.2 herein.

4.4 The Students' Union, in collaboration with St. Thomas University, Inc., shall inform students that any student caught transferring their UPass or Digital UPass to another individual may lose their UPass privileges for up to one (1) year.

4.5 The Students' Union represents and warrants that:

(a) they are a corporation duly incorporated and validly subsisting in all respects under the laws of the Province of New Brunswick and;

(b) they have the corporate power and authority to enter into this Agreement and to perform all of their obligations contained under this Agreement.

5. Terms and Conditions Applicable to the City

5.1 Transportation services shall be provided by the City, Monday to Saturday inclusive, excluding statutory holidays, during regular scheduled transit operating hours.

- 5.2 All costs and liability associated to staff working on behalf of the City will be the sole responsibility of the City.
- 5.3 In the event of any misconduct by a Full-time or Part-time Student (“Incident”), the transit driver, as agent for the City may ask said student to disembark from the transit bus. In addition, the City reserves the right to call upon the services of the police if required and the City reserves the exclusive right to suspend or terminate said student’s bus pass privileges for a period of up to one (1) year.
- 5.4 If requested, the City shall provide a written report of the Incident to the Students’ Union and/or St. Thomas University.
- 5.5 In the event of winter storms, blizzards or similar situations, the City shall follow its normal procedures for terminating its transportation service and there shall be no compensation or other action paid by the City to either of the other Parties or to any student for such cancellation.

6. Additional Terms and Conditions

- 6.1 The Parties acknowledge and agree that St. Thomas University shall, for the purposes of the UBPP, provide to the City the number of Full-time Students and the number of Part-Time Students enrolled with the University.
- 6.2 The Parties acknowledge and agree that no refunds shall be supplied to Full-time and/or Part-time Students who have opted into the UBPP.
- 6.3 The Parties acknowledge and agree that St. Thomas University will provide HotSpot with Full-time and Part-time student identification numbers on a bi-weekly basis, or as otherwise requested by the City.
- 6.4 The Parties acknowledge and agree that St. Thomas University will provide the City with the number of Full-time and Part-time Students who cannot or choose not to use smartphones for the purpose of obtaining a Digital UPass, therefore requiring a paper-based student bus passes (UPass), no later than seven (7) days prior to the ensuing month to allow sufficient time for the City to deliver said passes before the first of the month.
- 6.5 The Parties acknowledge and agree that in providing transportation service for the Full-time and opt-in Part-time Students, the City maintains exclusive control over the routes and any applicable service additions or extensions along its routes. The right to amend or change the designated loading and unloading points and time schedules is also reserved exclusively to the City. The City agrees that any changes will be carried out in consultation with the St. Thomas University and the Students’ Union.
- 6.6 The Parties acknowledge and agree that the City shall exclusively determine the hours of operation of the transit system.
- 6.7 The Parties acknowledge and agree that Fredericton Transit Operators may ask for Student ID’s issued by St. Thomas University to be shown in conjunction with a UPass

or Digital UPass should situations arise where further validation is warranted.

- 6.8 The Parties acknowledge and agree that the UBPP shall be valid on any future extensions to routes to the regular transit system that fall within the current municipal boundaries during the term of this Agreement.
- 6.9 The Parties acknowledge and agree that in the event that the City extends transit service beyond the municipal boundaries to areas of interest to UBPP participants, given that the UBPP would not be valid on such an extension, the Parties agree to enter into discussions which relate to participation in such extensions and the funding thereof.
- 6.10 The Parties acknowledge and agree that the Full-time and Part-time Students are not entitled to special treatment by the City and it is further acknowledged that said students will be treated in the same manner as any user of the service.
- 6.11 The Parties acknowledge and agree that Full-time or Part-time Students requiring use of the City's Para Transit service must be a registered participant and that use of the Para Transit service is subject to scheduling availability as outlined in the Para Transit Policy Handbook available on at www.fredericton.ca/transit
- 6.12 The Parties acknowledge and agree that this Agreement is the entire Agreement between the Parties. 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.
- 6.13 The Parties acknowledge and agree that 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 a written Agreement between them which shall be supplemental to and form part of this Agreement.
- 6.14 The Parties acknowledge and agree that all notices required to be given under this Agreement shall be well and sufficiently given if sent by registered mail, postage prepaid as follows:

To the City:

The City of Fredericton
397 Queen Street Fredericton,
New Brunswick E3B 1B5
Attention: Transit Manager

To the Students' Union:

The Students' Union of St. Thomas
University, Inc.
21 Pacey Drive, Room 32
Student Union Building
Fredericton, New Brunswick
E3B 5A3
Attention: President

and shall be deemed to have been given and received upon the date of mailing

thereof.

- 6.15 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.
- 6.16 The Parties acknowledge and agree that this Agreement shall enure to the benefit of and be binding upon each of the Parties hereto, their successors and assigns.
- 6.17 The Parties acknowledge and agree that no party shall assign any interest in this Agreement without the prior written approval of the other Party.
- 6.18 The Parties acknowledge and agree that 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.
- 6.19 The Parties acknowledge and agree that each party shall pay his own costs, charges and expenses of and incidental to the preparation of this Agreement.
- 6.20 The Parties hereto shall not be responsible for any failure or delay in the performance of any obligations hereunder caused by acts of God, flood, fire, war, public enemy, terrorism, blockade, civil commotion, epidemic, pandemic, stop-work order, lock-out, strike, injunction or other causes beyond their reasonable control.
- 6.21 The Parties acknowledge and understand that the City is subject to *Right to Information and Protection of Privacy Act*, SNB 2009, c. R-10.6, as amended, and as such, disclosure and confidentiality obligations are governed thereunder.
- 6.22 The Parties acknowledge and agree that 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 by the Parties, directly or through their agents, have participated in the preparation hereof.
- 6.23 The Parties acknowledge and agree that if a dispute arises concerning the application or interpretation of the Agreement, the Parties shall attempt to resolve the matter through good faith negotiations, more specifically, the dispute will be referred to their representatives set out above under 7.8 or their identified delegates, who will use their best efforts to resolve the matter amicably. If such negotiation fails, the Parties may, if necessary, and if the Parties consent in writing, resolve the matter through mediation or arbitration by a mutually acceptable mediator or arbitrator in accordance with the *Arbitration Act*, RSNB 2014, c. 100, of New Brunswick, as amended. It is further agreed by the Parties that the cost of such shall be borne equally by the Parties.
- 6.24 The Parties acknowledge and agree that they have had the opportunity to have this Agreement reviewed by their respective legal counsel.

IN WITNESS WHEREOF the Parties hereto have caused the herein Agreement to be duly executed by duly authorized officers and have caused their corporate seals to be affixed on the date first hereinabove written.

Signed Sealed and Delivered

) **THE CITY OF FREDERICTON**

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Michael G. O'Brien
Mayor

Jennifer Lawson Murray
City Clerk

**THE STUDENTS' UNION OF ST. THOMAS
UNIVERSITY, INC.**

President

PROVINCE OF NEW BRUNSWICK

COUNTY OF YORK

AFFIDAVIT OF CORPORATE EXECUTION

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

1. 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. 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. The signature "Michael G. O'Brien "subscribed to the foregoing instrument is the signature of Michael G. O'Brien, the Mayor of the City of Fredericton, and the signature "Jennifer Lawson Murray" subscribed thereto is my signature.
4. The Mayor and City Clerk are the officers of the City of Fredericton duly authorized to execute the foregoing instrument.

SWORN TO BEFORE ME at)
 the City of Fredericton, in the)
 County of York and Province of)
 New Brunswick, this ___ day of)
 April, 2021.)
)
)
 _____)
 A Commissioner of Oaths)
 Being a Solicitor)

 Jennifer Lawson Murray

PROVINCE OF NEW BRUNSWICK

COUNTY OF YORK

AFFIDAVIT OF CORPORATE EXECUTION

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

1. That I am the President of The Students' Union of St. Thomas University Inc. (the "Corporation"), a duly incorporated company under the laws of the Province of New Brunswick and as such have personal knowledge of the matters and things herein deposed to and have authority to make this affidavit on behalf of the Corporation.
2. That the President, _____, of the Corporation is the authorized signing officer to execute the annexed instrument (the "instrument ") in the name and on behalf of the Corporation.
3. That the signature "_____" subscribed to the foregoing instrument is the signature of "_____" this deponent, as the President of the Corporation.
4. That the seal affixed to the foregoing instrument is the corporate seal of the Corporation and was so affixed by order of the Board of Directors of the Corporation for the purpose of execution of the instrument.
5. That the instrument was so executed by the Corporation on the ___ day of April, 2021, as and for its act and deed for the uses and purposes therein expressed and contained.

SWORN TO BEFORE ME at)
the City of Fredericton, in the)
County of York and Province of)
New Brunswick, this ___ day of)
April, 2021.)
)
)
_____)
)
A Commissioner of Oaths)
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