

This Agreement made in duplicate this ____ day of June, 2021.

BETWEEN:

THE CITY OF FREDERICTON, a municipal corporation by virtue of the *Local Governance Act*, SNB 2017, c. 18, (hereinafter called the "**City**"),

-and-

COLLEGE OF CRAFT AND DESIGN STUDENT ASSOCIATION NEW BRUNSWICK INC, a duly incorporated company by virtue of the *Business Corporations Act* of the Province of New Brunswick (hereinafter referred to as the "**Student Association**").

(hereinafter referred to individually as a "Party", collectively as the "Parties")

WHEREAS the Parties entered into two separate one (1) year agreements regarding transportation services provided through a program called the Universal Bus Pass Program ("UBPP") to meet the needs of students attending the New Brunswick College of Craft and Design;

AND WHEREAS the Parties agree that the UBPP has been successful and are desirous of entering into a further agreement;

AND WHEREAS the UBPP shall be valid for unlimited transportation on the regular fixed route transit and Para Transit system of the City for students enrolled with the New Brunswick College of Craft and Design;

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

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

1. Definitions

"Student" means full-time and part-time people enrolled at the New Brunswick College

of Craft and Design (“NBCCD”) Fredericton campus.

“Student Identification Card” means documentation issued by the NBCCD showing that the holder of said documentation attends the NBCCD as a Student.

2. Term

- 2.1 This Agreement shall be for a term of three (3) years from September 1, 2021 and shall continue in full force until August 31, 2024, (“Term”).
- 2.2 For greater clarity, the Term shall be divided into three (3) academic years, being September 1, 2021 to August 31, 2022 (“Year 1”), September 1, 2022 to August 31, 2023 (“Year 2”) and September 1, 2023 to August 31, 2024 (“Year 3”).

3. Services to be Provided by the City

- 3.1 The City shall provide transportation services to Students who have been issued validated Student Identification Cards for the Academic Year during the Term.

4. Terms and Conditions Applicable to the Student Association

- 4.1 The Student Association will submit a per Student fee of One Hundred and Fifty-Five Dollars (\$155.00) for all Students, based on enrolment on October 1st of Year 1. The said fee will be paid by Students as part of their college fees and shall be collected by the NBCCD on behalf of the Student Association. Student enrollment numbers as of October 1st of Year 1 shall be used to calculate the amount collected by the NBCCD. The total cost will be remitted by the Student Association by cheque to the City on or before November 1st of the Year 1. No refund shall be supplied if Students withdraw from the NBCCD after October 1st of Year 1.
- 4.2 The Student Association will submit a per Student fee of One Hundred and Sixty Dollars (\$160.00) for all Students, based on enrolment on October 1st of Year 2. The said fee will be paid by Students as part of their college fees and shall be collected by the NBCCD on behalf of the Student Association. Student enrollment numbers as of October 1st of Year 2 shall be used to calculate the amount collected by the NBCCD. The total cost will be remitted by the Student Association by cheque to the City on or before November 1st of the Year 2. No refund shall be supplied if Students withdraw from the NBCCD after October 1st of Year 2.
- 4.3 The Student Association will submit a per Student fee of One Hundred and Sixty-Five Dollars (\$165.00) for all Students, based on enrolment on October 1st of Year 3. The said fee will be paid by Students as part of their college fees and shall be collected by the NBCCD on behalf of the Student Association. Student

enrollment numbers as of October 1st of Year 3 shall be used to calculate the amount collected by the NBCCD. The total cost will be remitted by the Student Association by cheque to the City on or before November 1st of the Year 3. No refund shall be supplied if Students withdraw from the NBCCD after October 1st of Year 3.

- 4.4 The Student Association represents and warrants to the City that it is a corporation duly incorporated and validly subsisting in all respects under the laws of the Province of New Brunswick and that it has the corporate power and authority to enter into this Agreement and to perform all the obligations contained under this Agreement.
- 4.5 The Student Association shall, no later than August 15th prior to the relevant academic year, provide the City with an approximate number of Students eligible for transportation by the City.
- 4.6 The Student Association shall issue Student Identification Cards to its Students, with Fredericton Transit validation in a format that is acceptable to the City, so the City may determine who is a member of the UBPP. The particulars and specifics of any alternative method of ID shall be to the satisfaction of the City of Fredericton Transit Manager. Validation stickers will be supplied to the Student Association by NBCCD at the sole expense of NBCCD.

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.
- 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 Students, the transit driver, as agent for the City may ask the Students 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 the Students' bus pass privileges for a period of up to one (1) year. If requested, the City shall provide a written report of the incident to the Student Association and the NBCCD.
- 5.4 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 the other Party or to the Students for such cancellation.

6. Transportation Service

- 6.1 The Parties acknowledge and agree in providing transportation service for

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 Student Association.

- 6.2 The Parties acknowledge and agree that the City shall exclusively determine the hours of operation of the transit system.
- 6.3 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.
- 6.4 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.
- 6.5 The Parties acknowledge and agree that the Students are not entitled to special treatment by the City and it is further acknowledged that the Students will be treated in the same manner as any user of the service.
- 6.6 The Parties acknowledge and agree that either Party may request a meeting to discuss issues associated with the UBPP. The date, time and location of the meeting shall be scheduled by mutual agreement between the Parties.
- 6.7 The Parties acknowledge and agree that 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 Policies and Procedures Handbook available at www.fredericton.ca/transit.

7. Additional Terms and Conditions

- 7.1 Section and Headings
The division of this Agreement into 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
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.

7.3 Amendments

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.

7.4 Notice

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 Student Association:
College of Craft and Design Student Association New
Brunswick Inc
457 Queen Street
Fredericton, NB
E3B 1B6
Attention: Megh Gusain

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

7.5 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.

7.6 Successors and Assigns

The Parties acknowledge and agree that this Agreement shall ensure to the benefit of and be binding upon each of the parties hereto, their successors and assigns. Neither Party shall assign any interest in this Agreement without the prior written approval of all other Parties.

7.7 Severability

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.

7.8 Costs

The Parties acknowledge and agree that each Party shall pay its own costs, charges and expenses of and incidental to the preparation of this Agreement.

7.9 Force Majeure

The Parties acknowledge and agree, in addition to Section 5.4 herein, 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.

7.10 Dispute Resolution

The Parties acknowledge and agree that if a dispute arises concerning the application or interpretation of the Agreement, the Parties shall first attempt to resolve the matter through good faith negotiations, more specifically, the dispute will be referred to their representatives set out above under Section 7.4 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, as amended. It is further agreed by the Parties that the cost of any mediation or arbitration shall be born equally by the Parties.

7.11 Contra Proferentem Rule Not Applicable

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 be 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.

7.12 Right to Information and Protection of Privacy Act

The Student Association acknowledges and understands that the City is 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.

7.13 Independent Legal Counsel

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

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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)
) per: _____
) Kate Rogers
) Mayor

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)
)
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) per: _____
) Jennifer Lawson Murray
) City Clerk

)
) **COLLEGE OF CRAFT AND DESIGN**
) **STUDENT ASSOCIATION NEW**
) **BRUNSWICK INC.**

)
)
)
)
) per: _____
) Megh Gusain
) 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 "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 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 June, 2021.)

_____)
Chantal L. Gauthier)
A Commissioner of Oaths)
Being a Solicitor)

_____)
Jennifer Lawson Murray

PROVINCE OF NEW BRUNSWICK

COUNTY OF YORK

AFFIDAVIT OF CORPORATE EXECUTION

I, Megh Gusain, 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 College of Craft and Design Student Association New Brunswick Inc, 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, Megh Gusain, of the Corporation are the authorized signing officers to execute the annexed instrument (the "instrument") in the name and on behalf of the Corporation.
3. That the signature "Megh Gusain", subscribed thereto is my signature.
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 June, 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 June, 2021.)

_____))
A Commissioner of Oaths)

_____))
Megh Gusain