

## AGREEMENT OF PURCHASE AND SALE

This Agreement made in duplicate, this \_\_\_\_ day of September, 2021.

**BETWEEN:** 725921 N.B. INC., a duly incorporated company having its registered office at 7 Mill Street, in the City of Fredericton and Province of New Brunswick, E3A 4L5, **hereinafter referred to as the “Developer”**

-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** the Developer is the owner of the parcels of land designated as 5-9 Mill/5 Bridge Street (SNB PID 01550839) and 7 Mill Street (SNB PID 75376004), located in Fredericton, New Brunswick (the “Developer’s Property”), which Developer’s Property is more particularly outlined on the sketch annexed hereto as Schedule “A”;

**AND WHEREAS** the City is the owner of the parcel of land designated as Canada Street (SNB PID 75373332), located in Fredericton, New Brunswick (the “City Property”), which City Property is more particularly outlined on the sketch annexed hereto as Schedule “B”;

**AND WHEREAS** as part of the transaction contemplated herein, the Developer has agreed to convey to the City a ±25.1 m<sup>2</sup> portion of the Developer’s Property for addition to the Bridge Street Public Right-of-Way (the “ROW Property”) and the necessary Local Government Services Easement (the “LGSE”) in exchange for the City conveying to the Developer the City Property, (collectively the “Exchange Properties”). The necessary LGSE is shown, outlined and delineated on the sketch annexed hereto as Schedule “C”;

**AND WHEREAS** the Parties acknowledge that this Agreement shall be subject to the final approval of Council for the City of Fredericton.

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

### **1. THE PROPERTIES**

1 In consideration of the City agreeing to sell the City Property to the Developer, the Developer agrees to purchase the City Property from the City for the Purchase Price and convey the ROW Property and LGSE to the City.

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

2.1 The Purchase Price of the City Property shall be the sum of Thirty Thousand Dollars (\$30,000.00) of lawful money of Canada, (the “Purchase Price”), plus any applicable taxes and adjustments.

2.2 The Purchase Price shall be payable by Cheque, to the City of Fredericton, or by such other means of payment as the City 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 City Property, 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 November 2, 2021, 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 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 sale of the City Property and the conveyance of the ROW Property and LGSE.

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

5.3 The Parties acknowledge and agree that the completion of the sale of the City Property and the conveyance of the ROW Property and LGSE as contemplated by this Agreement is conditional upon:

- (a) The City, at its sole cost and expense, shall be responsible for confirming the final dimensions of the LGSE to be reserved by the City as well as for the ROW Property to be acquired from the Developer and for submitting any required application to the Planning Advisory Committee. The City will provide the Developer with a copy of the final subdivision plan for the Developer's review, consideration and approval prior to going through the PAC process;
- (b) The City, at its sole cost and expense and with the approval of the Developer, making application to the Planning Advisory Committee with respect to the approval of the subdivision plan for the ROW Property to add to the Bridge Street Public Right-of-Way and LGSE;
- (c) Immediately upon the acquisition of the City Property, the Developer undertakes to have his Solicitor consolidate the City Property with the Developer's Property and acknowledges that structures cannot be placed on any LGSE; however, a wheelchair ramp is permitted provided that it is on deck blocks or other non-permanent foundations that would not prevent future replacement or maintenance of infrastructure contained within the LGSE;
- (d) The Developer and the City shall be responsible for their own legal counsel and related services that may be required in connection with this Agreement;
- (e) The Developer and the City acknowledge that the City Property is being sold on an "as is, where is" basis;
- (f) The Developer acknowledges that he will be responsible, at his sole cost and expense, for any such application for any required planning approvals to change any zoning, variances, etc to meet the intended use plans for the City Property being acquired by the Developer;
- (g) All property agreements and transactions are subject to the Planning Advisory Committee's recommendation, if any, and City Council's authorization and approval; and

(h) The Developer and the City satisfying and complying with all other terms and conditions contained herein.

## **6. DUE DILIGENCE**

6.1 The Parties shall be allowed up to and including the Closing Date, which shall be referred to as the “Due Diligence Period”, to satisfy themselves that:

- (a) the title to the City Property and the ROW Property 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 City 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 City 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; and
- (b) there are no outstanding orders, deficiency notices or directives issued by any federal, provincial or municipal authority affecting the City Property and ROW Property.

6.2 If, within the Due Diligence Period, the Parties notify each other 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 City Property and ROW Property 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 City Property and ROW Property.

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 ROW Property at their own expense on or before the Closing Date.

6.4 The Parties shall not call for the production of any title deed, abstract, survey or other evidence of title to the City Property or ROW Property except as are in the control or possession of the Parties. The Parties agree that the Parties will deliver any sketch or survey of the City Property or ROW Property in the Parties’ control or possession to the Parties as soon as practicable and prior to the last day allowed for examining title to the City Property or ROW Property.

6.5 The Parties shall, upon request, forthwith deliver letters in a form satisfactory to the Parties addressed to such governmental authorities as may be reasonably requested by the Parties or their solicitors authorizing the release of any information as to compliance matters which such governmental authorities may have pertaining to the City Property or the ROW Property; provided, however, that nothing herein contained shall be deemed to authorize or permit the Parties to request any governmental or municipal inspections of the City Property or ROW Property. 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 ROW Property 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 exchange the City Property and ROW Property "as is".

**8. OBLIGATIONS OF THE DEVELOPER 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 the Developer all of the City's right, title and interest in the City Property;
- (b) Subdivision Plan (ROW Property and LGSE) – such subdivision plan in registerable form as may be required to vest in the City all of the Developer's right, title and interest in the ROW Property and the LGSE;
- (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) 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 the Developer:  
725921 N.B. Inc.  
7 Mill Street  
Fredericton, NB E3A 4L5  
Attn: Michael Davis

with a copy to the Solicitor of each party.

City's Solicitor:  
Davis Law  
3707 Route 102 Highway  
Island View, NB E3E 1E9  
Attn: Jim Davis  
Tel: 506-453-1998  
E-mail: [jim@davislaw.ca](mailto:jim@davislaw.ca)

Developer's Solicitor:  
  
Fredericton, NB  
Attn:  
Tel:  
E-mail:

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 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.

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

In Witness Whereof this Agreement has been signed by the Developer on September \_\_\_\_\_, 2020.

**725921 N.B. INC.**

\_\_\_\_\_  
Michael Davis, Director

\_\_\_\_\_  
Carl Martens, Director

In Witness Whereof this Agreement has been signed by the City on \_\_\_\_September \_\_\_\_\_, 2021.

**THE CITY OF FREDERICTON**

\_\_\_\_\_  
Kate Rogers  
Mayor

\_\_\_\_\_  
Jennifer Lawson  
City Clerk



Schedule "A" – Developer's Property

Service New Brunswick

Service Nouveau-Brunswick



Scale/Échelle 1:1257

Date: 2021/09/01 12:37:00

Schedule "B" – City Property

Service New Brunswick

Service Nouveau-Brunswick



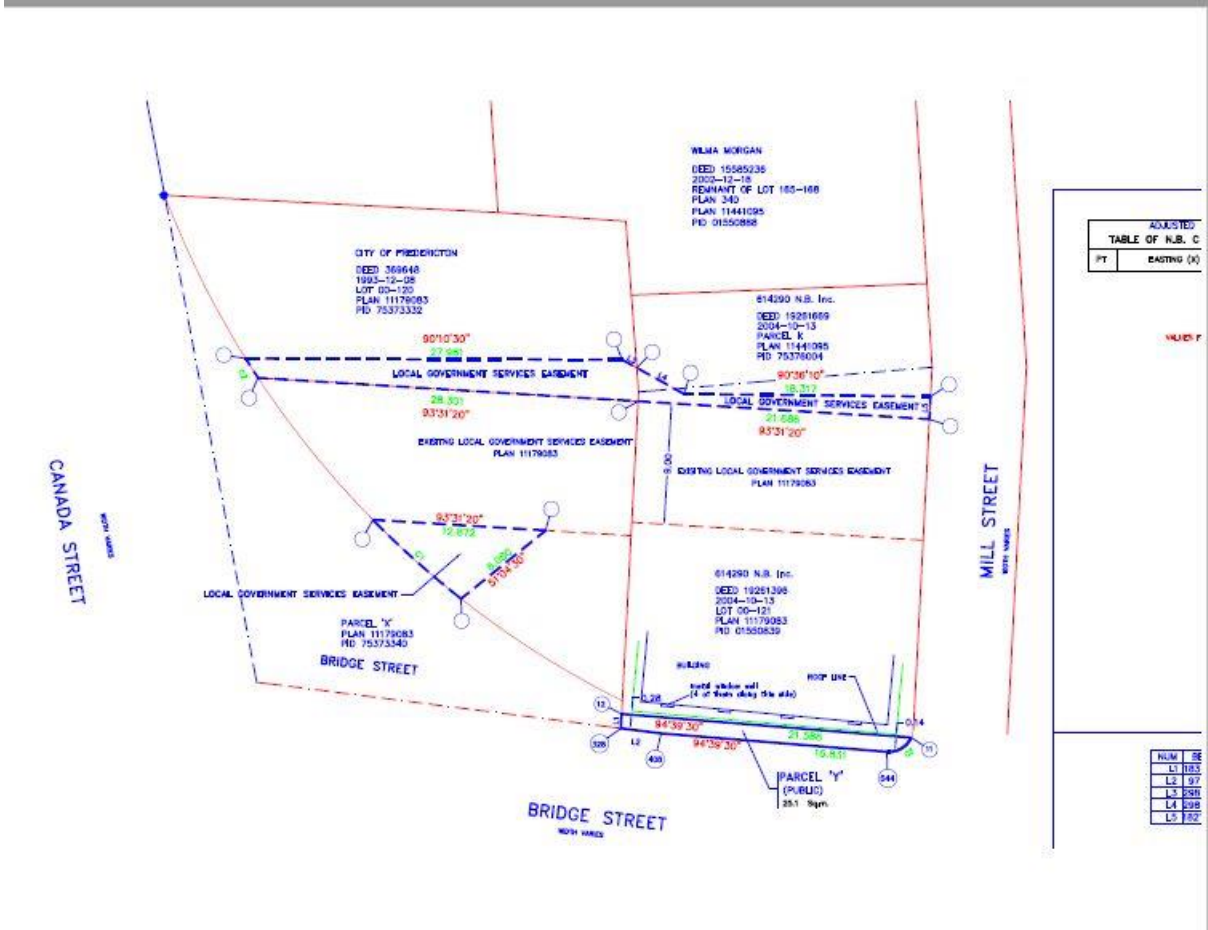
Scale/Échelle 1:1257

Date: 2021/09/01 12:33:44





SCHEDULE "C" - LGSE



**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 )  
September, 2021. )  
)  
)  
)  
)  
\_\_\_\_\_)  
Donna Legacy )  
A Commissioner of Oaths )

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