

AGREEMENT BETWEEN
THE CITY OF FREDERICTON
AND
GRADUATE STUDENT ASSOCIATION OF THE UNIVERSITY OF
NEW BRUNSWICK INC.

Regarding a universal bus pass program for the full time and part time
students of the University of New Brunswick

September 1, 2022 to August 31, 2024

This Agreement made in triplicate this _____ day of May, 2022.

BETWEEN:

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

-AND-

GRADUATE STUDENT ASSOCIATION OF THE UNIVERSITY OF NEW BRUNSWICK INC., a duly incorporated company by virtue of the *Business Corporations Act* of New Brunswick ("Graduate Student Association").

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

WHEREAS the Graduate Student Association originally requested in 2009 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 of New Brunswick Fredericton campus at a preferential price;

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

AND WHEREAS the Parties agreed that the UBPP had been successful and had continued the UBPP specifically for full-time graduate students;

AND WHEREAS the Parties agreed in 2018 to continue the UBPP for full-time graduate students and opt-in part-time graduate students enrolled with the University of New Brunswick ("University");

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

AND WHEREAS the Parties are desirous of entering into a new two (2) year agreement which includes full-time and opt-in part-time graduate students;

AND WHEREAS the UBPP shall be valid for unlimited transportation on the regular fixed route transit and Para Transit systems of the City for both full-time and opt-in part-time graduate students enrolled with the University and being members of the Graduate Student Association of the University of New Brunswick;

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 Graduate Student Association recognize the Digital UPass as a valid bus pass under the UBPP;

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 the mutual covenants herein and other good and valuable consideration, the Parties hereby agree to as follows:

1. Definitions

“Effective date” means September 1, 2022.

“Number of Students” means the total of the enrolment of full-time students as of November 1 of the Agreement year, who have not opted-out of the UBPP pursuant to Article 4.8 herein, as well as the number of part-time graduate students who have opted-in the UBPP.

“Students” include all full-time and those opt-in part-time graduate students who are enrolled with the University and being members of the Graduate Student Association of the University of New Brunswick.

2. Term

2.1 This Agreement shall be effective for a period of two (2) years from the Effective Date until August 31, 2023 (“Year 1”) and September 1, 2023 until August 31, 2024 (“Year 2”).

Full or Partial Restriction

2.2 In the event that, pursuant to the ongoing mitigation of Covid-19, the University of New Brunswick (“UNB”) fully or partially restricts attendance on the campus and offers alternate off-campus methods of learning to its students prior to the September 1 academic year commencing, the Parties agree and accept to extend this Agreement by one (1) year. Written notice of UNB’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 2022, the three (3) academic years covered under this Agreement will be September 1, 2022 to August 31, 2023 (“Year 1”), September 1, 2023 to August 31, 2024 (“Year 2”) and September 1, 2024 to August 31, 2025 (“Year 2E”).

2.3.1 In the event this Agreement is extended pursuant to Article 2.2 herein in 2023, there will be two (2) academic years for the remainder of the Agreement being September 1, 2023 to August 31, 2024 (“Year 2”) and September 1, 2024 to August 31, 2025 (“Year 2E”).

2.3.2 In the event this Agreement is extended pursuant to Article 2.2 herein for both the 2022-2023 and 2023-2024 academic years, there will be one (1) academic year remaining in this Agreement, being September 1, 2024 to August 31, 2025 (“Year 2E”).

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, 2025.

3. Services to be Provided by the City

- 3.1 The City shall provide transportation services for the respective school year of this Agreement to Students who have not opted out of the Digital UPass or the paper-based transit pass (“UPass”) pursuant to Article 4.8 herein.

4. Terms and Conditions Applicable to the Graduate Student Association

- 4.1 For Year 1, the Graduate Student Association shall pay the City One Hundred and Sixty-Two Dollars (\$162.00) for the Number of Students. The total cost will be remitted to the City by the Graduate Student Association by cheque on or before November 30, 2022.
- 4.2 For Year 2, the Graduate Student Association shall pay the City One Hundred and Sixty-Two Dollars (\$162.00) for the Number of Students. The total cost will be remitted to the City by the University by cheque on or before November 30, 2023.
- 4.3 In the event this Agreement is extended pursuant to Article 2.2 herein, the Graduate Student Association shall pay the City One Hundred and Sixty-Two Dollars (\$162.00) for the Number of Students for the Extended Year (Year 2E). The total cost will be remitted to the City by the University by cheque on or before November 30, 2024.
- 4.4 The Graduate Student Association understands and agrees that the fees identified above shall be paid by Students as part of their university fees and said fees shall be collected by the University on behalf of the Graduate Student Association.
- 4.5 No refund shall be supplied for Students opting out of the UPass after October 1 of the Agreement year.
- 4.6 The Graduate Student Association shall communicate with the Students advising that refunds will not be issued for the Digital UPass once the HotSpot registration process has been completed by individual students.
- 4.7 For Students enrolling after January 1, the Graduate Student Association shall submit a fee of Eighty-One dollars (\$81.00) for Students based on the additional enrolments in January, representing half of an academic year. These fees shall be paid by Students as part of their university fees and shall be collected by the University on behalf of the Graduate Student Association. Student enrolment numbers of these Students will be the enrolment as of May 1 of the Agreement year. The total cost will be remitted to the City by the University by cheque on or before May 31 of the Agreement year. No refunds shall be permitted.
- 4.8 The UBPP is by nature cooperative and it is recognized that all Students represented by the Graduate Students Association are required to participate in the program, with the following exclusions:
- 4.8.1 Students primarily associated with the Saint John Campus of the University, with respect to location of course work or location supervisor;
or
 - 4.8.2 Students living outside the geographical limits of the City of Fredericton.

Applications for exclusion must be made in writing to the Graduate Student Association prior to October 1 of the Agreement year. Prior to the validity review process, the Graduate Student Association will ensure that the applications for exclusion contain all necessary information. Application will be reviewed by a committee comprised of the President of the Graduate Student Association and the City of Fredericton Transit Manager, or their respective designates. The validity of the exclusion applications will be based solely on the criteria set out in Sections 4.8.1 and 4.8.2 above. The results of the review process shall be communicated and reported to the University on or before November 1 of the Agreement year.

- 4.9 The Graduate Student Association shall provide the City with the number of Students who cannot or choose not to use smartphones for the purposes 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 UPasses.
- 4.10 The Graduate Student Association represents and warrants that:
- (a) it is a corporation duly incorporated and validly subsisting in all respects under the laws of the Province of New Brunswick and;
 - (b) it has the corporate power and authority to enter into this Agreement and to perform all of the obligations contained under this Agreement.
- 4.11 By August 15th of the respective academic year, the Graduate Student Association shall provide HotSpot with a preliminary list of student identification numbers for the respective academic year. Furthermore, the Graduate Student Association shall inform the City of the projected numbers of the said list.
- 4.12 The Graduate Student Association shall provide validated student identification numbers on a bi-weekly basis to HotSpot beginning on August 15, 2022.
- 4.13 The Graduate Student Association acknowledges and agrees to disseminate information to its registered students outlining how to obtain the annual Digital UPass using HotSpot.
- 4.14 The Graduate Student Association 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.

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 In circumstances described under article 4.9 herein, the City shall provide UPasses to the Graduate Student Association before the first day of each month.
- 5.3 All costs and liability associated to staff working on behalf of the City will be the

sole responsibility of the City.

- 5.4 The \$1.00 per student, per month fee for Digital UPass service provided by HotSpot shall be the sole responsibility of the City.
- 5.5 In the event of any misconduct by any Student(s) ("Incident"), the transit driver, as agent for the City may ask the Student(s) 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 Student's bus pass privileges for a period of up to one (1) year.
- 5.6 If requested, the City shall provide a written report of the Incident to the Graduate Student Association and /or the University.
- 5.7 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. Transportation Service

- 6.1 The Parties acknowledge and agree in providing transportation service for Student, 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 Graduate 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 Digital UPass or UPass 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 University 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 Fredericton Transit Operators may ask for Student IDs issued by the Graduate Student Association to be shown in conjunction with a UPass or Digital UPass should situations arise where further validation is warranted.
- 6.7 The Parties acknowledge and agree that either Party may request a meeting to discuss

issues associated with the Digital UPass or UPass. The date, time and location of the meeting shall be scheduled by mutual agreement between the Parties.

7. Additional Terms and Conditions

7.1 Sections and Headings: The division of this Agreement into sections and the insertion of headings are for the convenience of reference 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 Graduate Student Association: The Graduate Association of the University
of New Brunswick Inc.
Alden Nowlan House, 676 Windsor Street
Fredericton, NB E3B 5A3
Attention: Vice President External, GSA
Administrative Assistant, GSA

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 inure 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 his 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 6.5, 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, blockade, civil commotion, terrorism, epidemic, pandemic, stop-work order, lock-out, strike, injunction or other causes beyond their reasonable control.
- 7.10 Right to Information and Protection of Privacy Act: The Graduate 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, as amended, and as such, disclosure and confidentiality obligations are governed thereunder.
- 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 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.
- 7.12 Dispute Resolution: 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*, R.S.N.B. 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.
- 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.

**THE REMAINDER OF THE PAGE IS
INTENTIONALLY LEFT BLANK**

IN WITNESS WHEREOF the Parties hereto have caused the herein Agreement to be duly

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. 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" 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)
May, 2022.)
)
)
_____)
)
A Commissioner of Oaths)
Being a Solicitor)

Jennifer Lawson

PROVINCE OF NEW BRUNSWICK

COUNTY OF YORK

AFFIDAVIT OF CORPORATE EXECUTION

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

1. That I am the President of the University of New Brunswick Graduate Student Association (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, Alicia Noreiga-Mundaroy, and the VP of Finance, Mehboob Reza, 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 of "Mehboob Reza" subscribed to the foregoing Instrument is the signature of Mehboob Reza, and the signature of "Alicia Noreiga-Mundaroy" 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 purposes of execution of the Instrument.
5. That the Instrument was so executed by the Corporation on the ___ day of _____, 2022, 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)
_____, 2022.)
)
)
_____)
A Commissioner of Oaths)
)

Alicia Noreiga-Mundaroy

