

THIS LICENCE AGREEMENT made in duplicate this _____ day of _____, 2019.

BY AND BETWEEN:

THE ROYAL UNITED SERVICES INSTITUTE OF NEW BRUNSWICK INC., [a non-profit company to be created] (hereinafter called "**RUSI**")

OF THE FIRST PART

- and -

THE CITY OF SAINT JOHN, having its City Hall at 15 Market Square, Saint John, New Brunswick, a body corporate by Royal Charter, confirmed and amended by Acts of the Legislative Assembly of the Province of New Brunswick (hereinafter called the "**City**")

OF THE SECOND PART

WHEREAS the City has established a linear park which skirts a portion of the eastern shore of Saint John Harbour, which park is known as Harbour Passage; and

WHEREAS the portion of Harbour Passage which is the subject of this Licence is leased by the City from the Province of New Brunswick; and

WHEREAS RUSI proposes to erect on the portion of the said Harbour Passage referred to in the immediately preceding recital a Naval Memorial with associated landscaping and improvements commemorating those who were killed or injured in the service of the Royal Canadian Navy; and

WHEREAS the City is pleased to support the proposal aforesaid;

NOW THEREFORE THIS LICENCE WITNESSETH that for and in consideration of these premises and other good and valuable consideration, the receipt and sufficiency whereof is hereby acknowledged, the City and RUSI hereby agree as follows:

1. Interpretation.

- a. Headings: The division of this Agreement into Sections, the insertion of headings, and the provision of any table of contents are for convenience of reference only and shall not affect the construction or interpretation of this Agreement;
- b. Number and Gender: Unless the context requires otherwise, words importing the singular include the plural and vice versa and words importing gender include all genders;

- c. Currency: All references to money shall refer to Canadian funds;
 - d. Computation of Time Periods: Except as expressly set out in this Agreement, the computation of any period of time referred to in this Agreement shall exclude the first day and include the last day of such period. If the time limited for the performance or completion of any matter under this Agreement expires or falls on a day that is not a Business Day, the time so limited shall extend to the next following Business Day. "Business Day", as used in this agreement, means any day other than a Saturday, Sunday, statutory holiday or civic holiday in the Province of New Brunswick. Time shall be of the essence of this Agreement;
 - e. Relationship: The City and RUSI acknowledge and agree that the relationship between them is solely that of independent contractors, and nothing herein shall be construed to constitute the parties as employer/employee, partners, joint ventures, co-owners, or otherwise as participants in a joint or common undertaking. Neither party, nor its employees, agents or representatives shall have any right, power or authority to act or create any obligation, express or implied, on behalf of the other;
 - f. Governing Law: This Licence shall be governed by and construed in accordance with the laws of the Province of New Brunswick and the laws of Canada applicable in that Province and shall be treated, in all respects, as a contract;
 - g. Registration: RUSI agrees that it shall not register this Agreement or any notice or reference in respect of this Agreement against the title to the City's Property.
2. (1) The City hereby grants to RUSI, subject to the terms and conditions set out herein, a licence (the "**Licence**"), by its officers, servants, agents, contractors and workers to enter upon the lands shown shaded in grey on the survey plan attached hereto and forming a part hereof as Schedule "A" (the "**Site**"), which Site is subject to a right of passage in the general public, for the purposes of:
- a. Installing, erecting, constructing, maintaining and repairing, replacing, altering and removing the Naval Memorial and associated landscaping and improvements (collectively, the "**Project**") shown conceptually on Schedules "B-1" and "B-2" attached hereto and a part hereof; as well as
 - b. Installing maintaining, operating, repairing, replacing, altering and removing cables, conduits, utilities and other subsurface infrastructure, all as may be reasonably necessary to achieve the performance of the work described in paragraph (a).
- (2) The Licensee shall exercise the Licence hereby granted in a manner so as to disrupt as little as reasonably possible the general public right of passage over and upon the Site.

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3. **Applicable Laws.** RUSI agrees that all work performed under or pursuant to the Licence shall comply with all federal, provincial and municipal laws, statutes, regulations, orders, ordinances, by-laws, rules, plans, policies and decrees (the “**Applicable Laws**”). Without limiting the generality of the foregoing, RUSI, at its sole cost and expense, shall (a) obtain and maintain any and all permits that are required by Applicable Laws at any time with respect to any such work and (b) provide copies of any such permits to the City upon request.
 4. **No Warranty.** The City makes no warranty or representation that the City’s Property is suitable for RUSI’s use, and RUSI acknowledges and agrees that it has satisfied itself in all respects with respect thereto.
 5. **Repairs and Maintenance.** Nothing herein shall obligate the City to perform any work, repair, renovation, maintenance on or of the Project. RUSI shall be responsible for all costs incurred by it in connection with the Licence and the exercise of the rights hereunder including, without limitation, the cost of any utilities required in connection with the operation, disconnection and reconnection of the Project. Without limiting the generality of the foregoing, it is expressly agreed and understood that the City shall not provide the service of snow or ice control to the Site.
 6. **Endowment.**
 - a. RUSI shall use its best efforts to establish an endowment as part of the Common Fund of the Greater Saint John Community Foundation Inc., which endowment shall generate an annual income of \$2,000.00;
 - b. It is expressly agreed and understood that the amount identified in paragraph (a) shall be adjusted annually on the anniversary date of the Licence based upon the percentage change to the previous 12 months Consumer Price Index (CPI) for New Brunswick, as determined by Statistics Canada.
 7. **Ownership.** For certainty, ownership of and responsibility for the Naval Memorial, shall remain with RUSI.
 8. **Term.**
 - a. Subject to paragraphs 8(d), (e), the term of the Licence shall commence on the Effective Date and continue so long as the City holds the leasehold or freehold title to the Site;
 - b. In the event of breach or noncompliance by RUSI of any provision hereof, an officer of the City shall deliver written notice thereof to RUSI;
 - c. Upon receipt of a notice pursuant to paragraph b, RUSI shall remedy the default or noncompliance performance within twenty business days, unless an extension thereof is given in writing on behalf of the City;

- d. In the event that any breach or noncompliance has not been remedied by RUSI pursuant to the provisions of paragraph c., the City may: (i) terminate the Licence by written notice to RUSI, effective the date identified in the said notice, without any liability or responsibility to RUSI or right in RUSI to claim compensation or recovery of any nature from the City; or (ii) arrange to remedy the breach of non-compliance and in such event, RUSI shall reimburse the City the cost of such remediation with reimbursement to be made not later than fifteen (15) business days following notice of such cost being provided to the Licensee pursuant to s. 16 hereof;
 - e. RUSI may surrender the Licence prior to the commencement of any work anticipated to be required to execute the Project, and without penalty or compensation due the City, by giving one (1) month's prior written notice thereof to the City;
 - f. RUSI expressly agrees and understands that in the event this Licence is terminated by the City, the City may use some or all of the amount deposited with the Greater Saint John Community Foundation pursuant to section 6 hereof, to remove the Project or any portion thereof. Furthermore, RUSI expressly agrees and understands that a written request from the City to the Greater Saint John Community Foundation which states that the request is being made pursuant to this paragraph, shall be sufficient without more, and hereby authorizes the Greater Saint John Community Foundation to deliver to the City the amount requested.
9. **Licence Fee.** RUSI shall pay to the City a licence fee (the "**Licence Fee**") without deduction, abatement or set-off, of \$1.00 per year beginning on the date of the execution of the Agreement by the parties and thereafter on January 1st in each successive calendar year.
10. **RUSI's Covenants.** RUSI represents, warrants, covenants and agrees as follows:
- a. RUSI shall repair any damage caused to the City's Property by the exercise of rights granted hereunder;
 - b. No construction lien or related notice or certificate of action shall be registered against title to the City's Property as a result of the activities being undertaken by or on behalf of RUSI or those for whom RUSI is responsible and if so registered, shall, upon RUSI becoming aware of same, be forthwith vacated, discharged and released from title at the sole cost and expense of RUSI;
 - c. Prior to commencement by or on behalf of RUSO of the work anticipated to be undertaken pursuant to the Licence, and thereafter as often as the schedule of such work is adjusted, or as repairs/maintenance or new work occurs, RUSI shall deliver to the City a written schedule identifying by day, month and year the activities comprising such work or repairs/maintenance;

- d. Upon completion of its execution of the Project, RUSI shall provide to the City with as-built drawings showing the location of all underground cabling and wiring. RUSI shall revise and update such as-built drawings as required from time to time upon making any changes or alterations.
- e. RUSI shall at all times and at its sole expense maintain the site and the monument thereon in a condition befitting the solemn nature of its intended purpose as described herein.

11. Insurance and Indemnity.

- a. RUSI shall maintain an insurance policy, including public liability insurance coverage naming the City as an additional insured, in an amount not less than Two Million Dollars (\$2,000,000.00) per occurrence or such greater amount as is prudent in the circumstances as reasonably determined by RUSI;
- b. RUSI shall indemnify and save harmless the City against any and all losses, claims, actions, damages, liabilities and expenses in connection with personal injury or death, property damage or any other loss or injury whatsoever arising out of or as a result of:
 - i. Any breach, violation or non-performance of the terms, covenants and obligations on the part of RUSI set out in this Licence Agreement; and
 - ii. RUSI's use of the City's Property pursuant to this Licence Agreement;
- c. The City shall not be liable or responsible in any way for any injury to any person or for any loss or damage to any property at any time in or upon the City's Property, howsoever the same shall be caused (unless caused or contributed to by the negligence or willful misconduct of the City or those for whom it may be responsible at law);
- d. Notwithstanding anything to the contrary contained herein, neither the City nor RUSI shall be liable to the other party for indirect, special or consequential damages (including but not limited to any loss of profits, loss of business revenue, failure to realize expected savings or any other commercial or economic loss) as a result of or arising out of this Licence Agreement.

12. Assignment. RUSI shall not assign this Licence Agreement (in whole or in part) or sublicense or otherwise transfer or assign any of its rights hereunder without the prior written consent of the City, which consent may not be unreasonably or arbitrarily withheld.

13. Successors and Assigns. This Licence Agreement and everything contained herein shall enure to the benefit of and be binding upon each of the parties hereto and their respective successors and permitted assigns.

- 14. Entire Agreement.** This Agreement continues the entire agreement between the parties pertaining to the subject matter of this Licence Agreement and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written. There are no conditions, warranties, representations or other agreements between the parties in connection with the subject matter of this Licence Agreement (whether oral or written, express or implied, statutory or otherwise) except as specifically set out in this Licence Agreement
- 15. Notices.** Any notice, certificate, consent, determination or other communication required or permitted to be given or made under this Agreement shall be in writing and shall be effectively given and made if (i) delivered personally, (ii) sent by prepaid courier service or mail, or (iii) sent prepaid by fax, in each case to the applicable address set out in Section 16 hereto.
- 16.** Notice hereunder shall be adequately given if delivered by hand or prepaid registered mail:
- a. In the case of the City to:

Common Clerk
City of the City of Saint John
8th Floor City Hall
15 Market Square
Saint John, NB E2L 1E8
Fax: (506) 674-4214
 - b. In the case of RUSI to:

Lt (ret) Bernard J. Cormier
Secretary
Royal United Services Institute of New Brunswick
83 Sewell Street
Saint John, NB E2L 3A3
H: 506-642-5815
C: 506-651-3414
cormier53@gmail.com

THIS LICENCE AGREEMENT shall enure to the benefit of and be binding upon the parties hereto, their successors and permitted assigns respectively.

SIGNED, SEALED & DELIVERED)

In the presence of:)

THE CITY OF SAINT JOHN

Mayor

Common Clerk

Common Council Resolution:
_____, 2019

**THE ROYAL UNITED SERVICES INSTITUTE OF
OF NEW BRUNSWICK INC.**

Per: _____

[ONE OR TWO SIGNATORIES? CORPORATE SEAL?]

PROVINCE OF NEW BRUNSWICK

COUNTY OF SAINT JOHN

I, Jonathan Taylor, of the Town of Quispamsis, in the County of Kings and Province of New Brunswick, MAKE OATH AND SAY:

1. THAT I am the Common Clerk of The City of Saint John and have custody of the Common Seal hereof.
2. THAT the seal to the foregoing instrument affixed is the Common Seal of The City of Saint John and that it was so affixed by Order of the Common Council of the said City.
3. THAT the signature "Don Darling" to the said instrument is the signature of W. Donald Darling, Mayor of the said City, and the signature "Jonathan Taylor" thereto is my own signature.
4. THAT we are the proper officers to sign the foregoing instrument on behalf of The City of Saint John.

SWORN TO BEFORE ME)
at the City of Saint John, in the)
County of Saint John and)
Province of New Brunswick)
this ____ day of _____, 2019)
)
)
_____)
)
Commissioner of Oaths)
Being a Solicitor)
)

Jonathan Taylor

NOTE: This Affidavit is for one signatory and a corporate seal. May need to be changed if there are two signatories and/or the corporation does not have a corporate seal.

PROVINCE OF NEW BRUNSWICK
COUNTY OF _____

I, _____, Deponent, of _____, in the County of _____ and Province of New Brunswick, MAKE OATH AND SAY:

1. That I am the _____ of **The Royal United Services Institute of New Brunswick Inc.** (the “**Corporation**”), the Licensee named in the foregoing instrument and am duly authorized to make this affidavit;
2. THAT the corporate seal affixed to the within instrument is the corporate seal of the Corporation and was thereto affixed by order of the Board of Directors of the Corporation to and for the uses and purposes therein expressed and contained;
3. THAT the name “_____” subscribed to in the within instrument is the signature of me, the said _____, and was thereto subscribed by order of the Board of Directors of the Corporation to and for the uses and purposes therein expressed and contained;
4. THAT the President is the duly authorized officer of the Corporation to execute the within instrument.

SWORN TO before me at _____)
 _____, in the County of _____)
 _____ and Province of _____)
 New Brunswick, this _____ day of _____)
 _____, 2019)

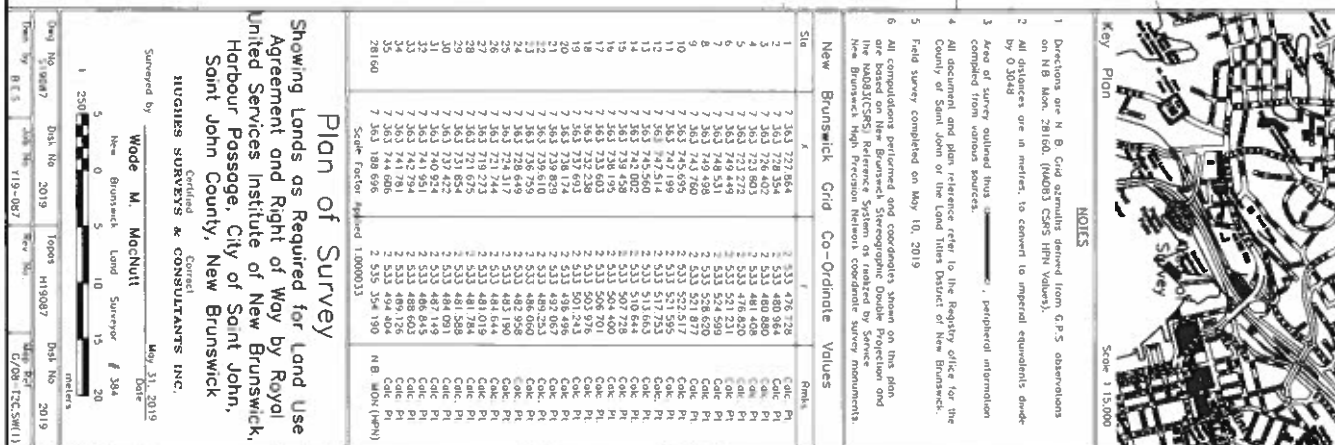
Deponent

Commissioner of Oaths Being a Solicitor

Dimension Table		
Pi-Pi	Diameter	Asymh
6-7	3.49	105.14, 60°
7-8	4.14	76.29, 10°
8-9	9.05	72.51, 30°
9-10	10.51	72.51, 30°
10-11	17.6	328.30, 50°
11-12	1.86	274.40, 40°
12-13	3.26	40.74, 40°
13-14	4.67	220.18, 30°
14-15	3.87	228.54, 30°
15-16	3.56	248.12, 50°
16-17	1.50	248.12, 50°
17-18	3.05	243.23, 10°
18-19	6.10	333.23, 10°
19-20	4.71	268.29, 40°
20-21	7.83	202.29, 40°
21-22	4.23	268.29, 40°
22-23	4.28	228.14, 10°
23-24	4.34	176.55, 40°
24-25	2.96	190.51, 50°
25-26	3.59	235.43, 10°
26-27	2.16	349.58, 60°
27-28	2.65	248.31, 50°
28-29	3.56	107.7, 30°
29-30	6.11	24.12, 10°
30-31	4.65	31.1, 30, 40°
31-32	1.95	64.42, 50°
32-33	1.14	152.41, 40°
33-34	5.29	85.23, 50°
34-35	4.66	85.23, 40°
1-2	1.95	182.27, 10°
2-3	1.95	182.27, 10°
3-4	4.62	263.21, 40°
4-5	4.59	338.50, 50°

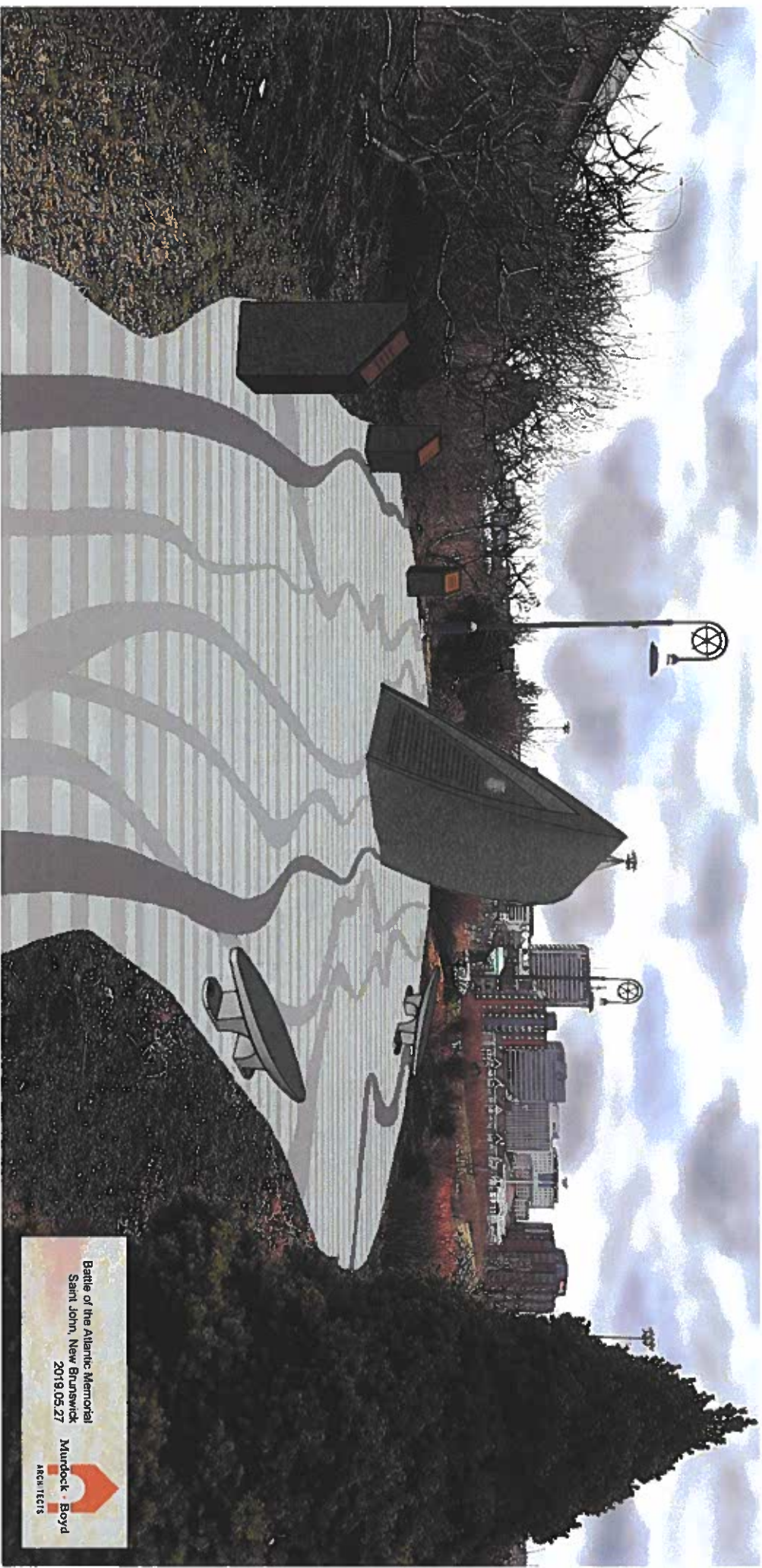
Doc. 224,396
Vol. 624 Pp. 1021
Rcg. May 25, 1970

Saml. John Hinzbour Bridge Authority
to
Her Majesty The Queen in Right of The
Province of New Brunswick, Represented
by the Minister of The Department of
Transportation and Infrastructure



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SCHEDULE "B-1"



Battle of the Atlantic Memorial
Saint John, New Brunswick
2019.05.27



SCHEDULE "B-2"

