

**CHARGING STATIONS LICENSE AGREEMENT  
(Market Square Parking Garage Site)**

This Charging Stations License Agreement ("**Agreement**") is entered into as of the \_\_\_\_\_ day of November, 2021 ("**Agreement Date**")

**BETWEEN**

**The City of Saint John**, a body corporate by Royal Charter confirmed and amended by Acts of the legislative Assembly of the Province of New Brunswick, with registered office at 15 Market Square, Saint John, NB E2L 4L1 (the "**Grantor**")

**AND**

**The Power Commission of the City of Saint John**, doing business under the name and style of Saint John Energy, a body corporate, whose address is 325 Simms Street, Saint John, NB E2M 3L6 ("**SJE**").

(collectively referred to as the "**Parties**" and individually as a "**Party**")

**WHEREAS** the Parties are entering into this Agreement with respect to certain Electric Vehicle Charging Stations to be installed by SJE on the Grantor's property;

**NOW THEREFORE THIS AGREEMENT WITNESSES** that for and in consideration of the sum of One Dollar (\$1.00) and for other good and valuable consideration, receipt of which is hereby acknowledged, and in consideration of the mutual covenants and promises set out herein, the Parties agree to as follows:

1. **Grant of License.** The Grantor represents that it is the lessee of a certain parking garage (the "**Parking Garage**") located at Market Square in the City of Saint John identified as PID 55011878(the "**Property**"). The Grantor hereby grants to SJE for the term of this Agreement: (i) a license to use and occupy that portion of the Property as more particularly described at Schedule "A" hereto (the "**Premises**") for the Purpose, as defined below; and (ii) any other necessary licenses for access and utilities for the Purpose.

2. **Purpose.** The Premises may be used exclusively by SJE for any lawful activity in connection with the design, development, construction, installation, maintenance, repair, replacement, removal, security, and operation of electric vehicle chargers and ancillary items, including, without limitation, electrical equipment, hardware, software, signage and all supporting equipment and structures (which may include concrete pads and protective bollards) (collectively, the "**Charging Stations**"), together with any other uses permitted herein (the

“**Purpose**”), on the terms and conditions set forth in this Agreement. The Grantor warrants the quiet enjoyment of the Premises by SJE for the Purpose as set out in this Agreement.

3. **Term.** The term of this Agreement (as extended or renewed from time to time, the “**Term**”) shall commence on the Agreement Date for a period of ten (10) years and any further renewals in accordance with paragraph 4 herein provided that should SJE so request, the Parties agree to consider expanding the Term of this Agreement on terms and conditions to be mutually agreed upon.

4. **Renewal.** Following the expiration of the initial 10-year Term, this Agreement will automatically renew for successive 5-year periods, unless terminated by either Party upon at least thirty (30) days prior written notice. During the term of any successive renewal periods, the terms and conditions of this Agreement shall apply.

5. **Termination.** Either Party may terminate this Agreement at its sole discretion at any time during the Term upon ninety (90) days’ written notice to the other Party, provided that if the Grantor terminates this Agreement prior to the end of the Term, the Grantor will compensate SJE for any consequential loss of asset value or federal government contribution requiring repayment by SJE under the Zero Emission Vehicle Infrastructure Program funded by the federal Department of Natural Resources. Further, this Agreement may be immediately terminated by either Party under either of the following circumstances:

a. the other Party breaches or fails to perform any of its obligations in any material respect, and such breach or failure continues uncured for ninety (90) business days after receipt of written notice; or

b. the other Party becomes insolvent or proceedings are instituted by or against it under any provision of any bankruptcy or insolvency laws.

6. **Maintenance of Premises and Taxes.**

a. The Grantor shall cause the Premises to be maintained in a clean, safe, and orderly condition, to at least the same standard as other areas at the Property.

b. The Grantor shall have no responsibility to maintain the Charging Stations or related SJE equipment, hardware, software, or signage. SJE owns the Charging Stations and the Grantor shall not retain any ownership rights in the Charging Stations and related SJE equipment.

**Z. Installation Activities.**

a. SJE shall, at its sole cost and expense, be responsible for all installation activities (the "**Installation Activities**") required to support the operation of the Charging Stations and services therewith, including furnishing and installing all materials, equipment, and labor required for the installation of the Charging Stations. This includes but is not limited to all work related to the development of plans and documents for supplying power to the Charging Stations per SJE standards and all permitting requirements; the hiring and coordination of all vendors and contractors; the installation of electrical equipment, utility lines, hardware, and software; and site preparation, trenching, repaving, and landscaping. Following the installation, SJE shall activate and commission the Charging Stations.

b. SJE may, at any time during the Term and in its discretion modify, including, without limitation, upgrade, replace, and/or remove all or a portion of the Charging Stations (collectively, "**Modifications**"), whether or not said items are considered fixtures and attachments to the Premises under applicable laws; provided, however, before any such Modifications, SJE shall provide at least sixty (60) days prior notice to the Grantor and, to be included in such notice, supporting documentation of the Charging Stations' customer utilization justifying the need for any such Modifications.

c. Before beginning any Installation Activities, SJE shall provide a copy of the construction schedule, Charging Stations specifications, and installation plans to the Grantor for its approval, which approval shall not be unreasonably delayed or withheld. No work shall begin until plans have been approved by all governmental authorities and all applicable permits and certifications have been obtained from all governmental authorities by SJE.

d. With respect to its Installation Activities, SJE shall ensure that it or its designated contractor(s) or service providers perform Installation Activities only during times and days acceptable to the Grantor and in a manner so as not to unreasonably interfere with the Grantor's business operations.

e. Following the Installation Activities and any Modifications, SJE shall ensure that the Premises and any other portion of the Property shall be restored to a clean, safe, and orderly condition, to at least the same standard as other areas at the Property. Should any of the Premises and any other portion of the Property become damaged following the Installation Activities or any Modifications that arose directly from the Installation Activities or any Modifications then SJE shall be responsible for repairing such damage at SJE's expense.

f. On completion of any Installation Activities under this Agreement, the Grantor shall not retain any ownership rights of the Charging Stations and related equipment, hardware, software, signage, and supporting equipment and structures at the Property.

**8. Electricity.** SJE shall offset the energy cost of the Charging Stations against the metered charges to the Grantor for the Parking Garage. Neither the Grantor nor SJE has any responsibility or liability for interruption, curtailment, failure, or defect in the supply or character of utilities furnished to the Charging Stations, unless the cause of the interruption is covered by the Party's indemnity.

**9. Charging Services, Operation and Maintenance.**

**a.** The Charging Stations shall be accessible to the general public as well as SJE's subscribers, customers, agents, employees, contractors, vendors, guests, and invitees ("**SJE Customers**"), who shall be charged in amounts reasonably determined by SJE, and which may change from time to time in SJE's sole discretion.

**b.** SJE shall provide maintenance to the Charging Stations and ensure all equipment is properly checked, tested, and activated for safe and proper operation. The Charging Stations will be connected to a cloud-based network billing and communication system capable of monitoring the Charging Stations for errors, or malfunctions at all times.

**c.** The Charging Stations shall have the ability to stop flow of power when not in use. The system shall have over-current protection to prevent vehicles from drawing too much power.

**10. Access.** The Property includes a parking lot available to the public and the Grantor shall allow the public and SJE Customers access to the Premises at all times during the Term of this Agreement, except during times at which the Grantor must close the parking lot for maintenance, safety, special events, and other unforeseen reasons in the discretion of the Grantor. Other than in the case of an emergency, the Grantor shall use best efforts to notify SJE at least forty-eight (48) hours in advance of such a closure. Subject to all other provisions and obligations of this Agreement and applicable permitting requirements, SJE and its employees, contractors, and vendors may access the Premises and Property for Installation Activities according to paragraph 7 herein, and to maintain, inspect, repair, upgrade, or replace any portion of the Charging Stations.

**11. Designated Parking Stalls.** The Grantor will provide two designated parking stalls adjacent to the Charging Stations and these designated parking stalls shall be for the exclusive use of the public and SJE Customers to access the Charging Stations. Normal parking fees shall be charged to and payable by users of the Charging Stations in addition to any fees payable to SJE.

**12. Signage and Striping.** SJE may paint, place, erect, or project signage, marks, or advertising devices in, on, about, or around the Premises at SJE's sole cost and subject to applicable laws and regulations. At no time may the Grantor place any signage on the Premises or the Charging Stations. The signage shall be consistent with the Grantor's commercial retail theme and style. SJE shall install electric vehicle parking stall pavement striping and markings per the plans approved by the Grantor. All signage and pavement markings must be consistent with industry standards for electric vehicle parking, the City of Saint John requirements, and

Provincial and Federal guidelines. SJE shall furnish and install and maintain all materials, equipment, and labor for the Charging Stations signage and pavement markings.

**13. Promotional Activities.** During the Term of the Agreement, SJE and the Grantor may promote the availability of the Charging Stations through traditional and/or electronic media, including providing the address to the Property and a description thereof. No Party shall use the other Party's trade or service marks, logos, or other proprietary materials without the prior written consent of the other Party.

**14. Restoration of Premises.** Upon the termination of this Agreement, SJE shall remove the Charging Stations and all of SJE's other property from the Premises and Property within ninety (90) days. SJE shall return the Premises, and the Property to the extent SJE's work has damaged or altered the Property, to its original condition prior to the execution of this Agreement, reasonable wear and tear excepted. These obligations shall survive the termination of this Agreement and shall not be excused for any reason, including but not limited to termination due to SJE's insolvency.

**15. Indemnity.** This Agreement is made upon the express condition that

**a.** The Grantor shall indemnify and save harmless SJE from and against any claims, losses, damages, demands or actions rising out of any breach, violation or non-performance of any covenants or conditions in this Agreement required to be fulfilled, observed, and performed by the Grantor.

**b.** SJE shall indemnify and save harmless the Grantor from and against any claims, losses, damages, demands or actions rising out of any breach, violation or non-performance of any covenants or conditions in this Agreement required to be fulfilled, observed, and performed by SJE.

**c.** The Grantor shall be and remain responsible for all costs, expenses, fines, and penalties arising from hazardous waste, hazardous materials, environmental dangers, and environmental damage present prior to SJE occupying the Premises. The Grantor shall be responsible for all costs, expenses, fines, and penalties arising from hazardous waste, hazardous materials, environmental dangers, and environmental damage which arise during the Term and that occur as a result of the negligence, action or inaction of the Grantor, its employees, agents, or assigns.

**16. Insurance.**

**a. Minimum Coverage.** SJE shall acquire and maintain general commercial liability insurance with respect to the installation, operation, and maintenance of the Charging Stations in the minimum amount of \$5,000,000 in accordance with the terms and conditions of this Agreement.

**b. Limitation of Liability:** In no event shall either Party be liable (in contract or in tort, including negligence and strict liability) to such other Party or its directors, officers,

agents, and employees for any special, indirect or consequential damages relating to this Agreement. The entire liability of each Party for any and all claims of any kind arising from or relating to this Agreement will be subject in all cases to an affirmative obligation on the part of the other Party to mitigate its damages. Except with respect to its indemnification obligations under Paragraph 15, SJE's total liability to the Grantor on an aggregate basis arising out of or in connection with this Agreement, whether in contract or in tort, shall not exceed \$5,000,000.

**18. Representations, Warranties, and Covenants.** SJE and the Grantor each hereby represents and warrants to the other that, as of the Agreement Date: (a) it has all necessary power and authority to execute, deliver, and perform its obligations hereunder; (b) the execution, delivery, and performance of the Agreement have been duly authorized by all necessary corporate actions and none of the Agreement's provisions violate any term or condition of its governing documents, contracts to which it is a party, or any law, regulation, order, or other applicable legal determination; (c) there is no pending or known threatened litigation or proceeding that may adversely affect its ability to perform the Agreement; (d) it is duly organized and validly existing under the laws of the jurisdiction of its organization; (e) the Agreement constitutes a legal, valid, and binding obligation, except as enforceability may be limited by applicable bankruptcy, insolvency or similar laws affecting creditors' rights and general principle of equity; (f) that this Agreement and subsequent construction and maintenance of the Charging Stations shall not infringe any pre-existing lease agreements between the Grantor and other parties; and (g) at all times during the Term, it will comply with all applicable Federal, Provincial, and local laws, rules, and regulations (including, without limitation, all zoning ordinances and building codes) in performing its obligations under the Agreement.

**19. Notice.** Any notice provided or permitted to be given under this Agreement must be in writing and be served either by (i) deposit in the mail, addressed to the Party to be notified, postage prepaid, and registered or certified, with a return receipt requested, or (ii) deposit with an internationally-recognized overnight delivery carrier, with notice of delivery to the recipient Party. Notice given by registered or certified mail or overnight carrier shall be deemed delivered and effective on the date of delivery shown on the return receipt or proof of receipt. For purposes of notice the addresses of the Parties shall be as set forth in this Agreement. Each Party may change its address for notice by giving notice thereof to the other Party.

**20. Intentionally Deleted.**

**21. Casualty and Condemnation.** If any portion of the Property is damaged by fire or other casualty in a manner that adversely affects SJE's use of the Premises, then either Party may, within thirty (30) days of the date of such fire or other casualty, elect to terminate the Agreement by written notice to the other Party. If any portion of the Property is condemned or taken in any manner for a public or quasi-public use that could adversely affect SJE's use of the Premises, then SJE may elect to terminate the Agreement effective as of the date title to the condemned portion of the Property is transferred to the condemning authority.

20.     **No Agency Relationship.** Nothing in this Agreement shall be deemed or construed to create a joint venture, partnership, fiduciary, or agency relationship between the Parties for any purpose, and the employees of one Party shall not be deemed to be the employees of the other Party. Except as otherwise stated in this Agreement, neither Party has any right to act on behalf of the other, nor represent that it has such right or authority.

21.     **Validity.** The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement. The Agreement shall be construed and deemed reformed to the extent necessary to render valid such term and the rights and obligations of the Parties shall be enforced accordingly.

22.     **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the internal laws of the Province of New Brunswick without giving effect to conflict of law rules. The venue shall be in the City of Saint John.

23.     **No Waiver.** No waiver by the Grantor or SJE of any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach by the Grantor or SJE of the same or any other provision. The Grantor's consent to, or approval of any act shall not be deemed to render unnecessary the obtaining of the Grantor's consent to or approval of any subsequent act by SJE.

24.     **Remedies.** The rights and remedies provided by this Agreement are cumulative, and the use of any right or remedy by any Party does not preclude or waive its right to use any or all other remedies. These rights and remedies are given in addition to any other rights a Party may have under any applicable law, in equity or otherwise.

25.     **Force Majeure.** Neither Party is responsible for any delay or failure in performance of any part of this Agreement to the extent that delay or failure is caused by fire, flood, explosion, war, embargo, government requirement, civil or military authority, act of God, act or omission of carriers or other similar causes beyond the Party's control.

26.     **No Third-Party Beneficiaries.** This Agreement does not confer any rights or remedies on any person other than the Parties and their respective successors and permitted assigns.

27.     **Integration; Amendments.** This Agreement contain all agreements, promises, and understandings between the Parties, and there are no verbal or oral agreements, promises, or understandings between the Parties. Any amendment, modification, or other change to this Agreement shall be ineffective unless made in a writing signed by the Parties hereto.

28.     **Counterparts.** This Agreement may be executed in any number of counterparts with the same effect as if all the Parties had signed the same document.

29.     **Construction.** All documents or items attached to, or referred in, this Agreement are incorporated into this Agreement as fully as if stated within the body of this Agreement. Each

Execution Version

Party has cooperated in the drafting, negotiation, and preparation of this Agreement and nothing herein shall be construed against either Party on the basis of that Party being the drafter of such language.

30. **Recording of Agreement.** SJE may record Notice of this Agreement with the New Brunswick Land Titles Office or the New Brunswick Registry Office.

**IN WITNESS WHEREOF**, the Parties execute this Agreement as of the date first above written.

**THE CITY OF SAINT JOHN**

**SAINT JOHN ENERGY**

By: \_\_\_\_\_

Mayor

By: \_\_\_\_\_

Ray Robinson, President and CEO

And: \_\_\_\_\_

Common Clerk

Notice Address:

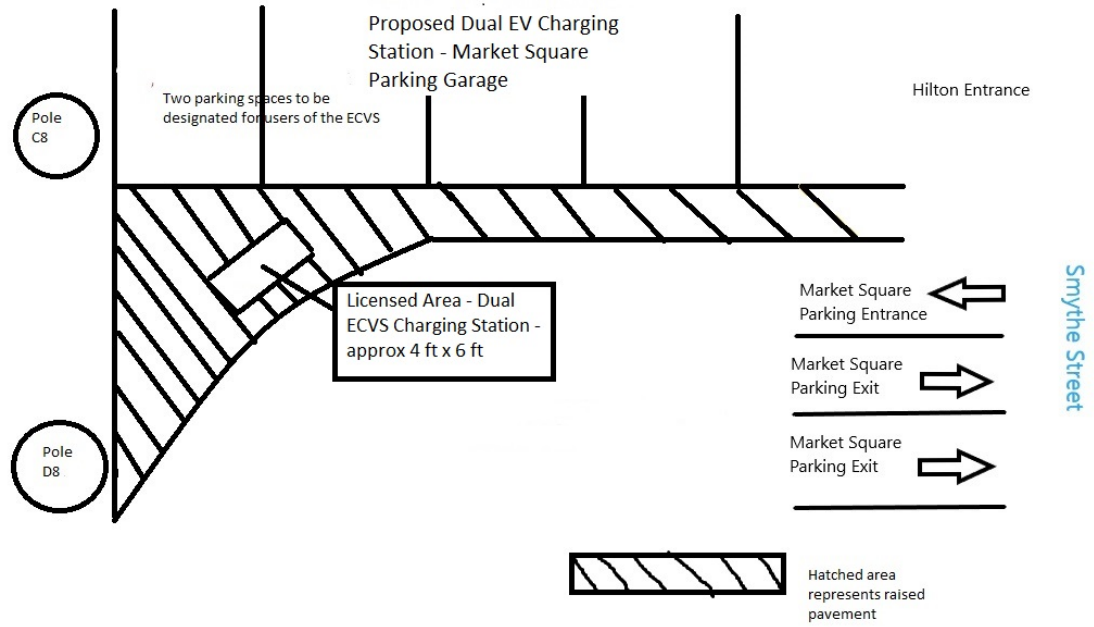
15 Market Square, Saint John, NB E2L 4L1

Notice Address:

325 Simms Street, Saint John, NB E2M 3L6



Schedule A – Sketch of License – Market Square Parking Garage– PID 55011878



**AFFIDAVIT OF CORPORATE EXECUTION**

Deponent: Ray Robinson  
325 Simms Street  
Saint John NB E2M 3L6

Office Held by Deponent: President

Corporation: The Power Commission of the City of Saint John

Place of Execution: Saint John, NB

Date of Execution: November , 2021

I, Ray Robinson, the deponent, make oath and say:

1. That I hold the office specified above in the corporation specified above, and am authorized to make this affidavit and have personal knowledge of the matters hereinafter deposed to;
2. That the attached instrument was executed by me, Ray Robinson as the officer duly authorized to execute the instrument on behalf of the corporation;
3. That the seal of the corporation was affixed to the instrument by order of the Board of Directors of the corporation;
4. That the instrument was executed at the place and on the date specified above;
5. That the ownership of a share of the corporation does not entitle the owner thereof to occupy the parcel described in the attached instrument as a marital home.

SWORN TO at the City of Saint John )  
in the Province of New-Brunswick )  
on November , 2021 )

Before me: )  
)  
)  
)

\_\_\_\_\_  
Ray Robinson

\_\_\_\_\_  
Commissioner of Oaths  
Being a Solicitor