


MONCTON

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**LEGAL
DEPARTMENT**
City Hall
655 Main Street
Moncton, NB
Canada E1C 1E8

**SERVICE
JURIDIQUE**
Hôtel de ville
655, rue Main
Moncton, NB
Canada E1C 1E8

February 13, 2019

Downtown Moncton Centreville Inc.
770 Main Street, Suite A 104
Moncton, NB E1C 9Y3

Attention: Anne Poirier Basque
Executive Director

**Re: Memorandum of Understanding
Centre Avenir Centre**

Please find enclosed for your records a duly executed Memorandum of Understanding between the City of Moncton and Downtown Moncton Centreville Inc.

Yours very truly,



J. Nick Robichaud
City Solicitor

JNR/sl

Encl.

cc: Jacques Doucet, General Manager, Finance Services (CFO)
Kevin Silliker, Director, Economic Development

MEMORANDUM OF UNDERSTANDING

BETWEEN: **Downtown Moncton Centreville Inc.**, a corporation duly incorporated by Act of the Legislature of the Province of the New Brunswick, and having a registered office at 770 Main Street, Suite A 104, Moncton, New Brunswick, (hereinafter "**DMCI**")

AND: **The City of Moncton**, a local government body corporate pursuant to the New Brunswick *Local Governance Act*, and having a head office at 665 Main Street, Moncton, New Brunswick, (hereinafter the "**City of Moncton**")

WHEREAS:

A. The City of Moncton has undertaken the construction of a multi-use sport and entertainment facility (the "**Centre**") at the heart of the downtown area in the City of Moncton;

B. DMCI has been from the beginning, and continues to be, a strong advocate for the development of the Centre, believing the Centre to be crucial to, not only DMCI's stakeholders in the Moncton downtown area, but also the entire southeastern region of New Brunswick. The Centre has been, and continues to be, a catalyst for development and economic activity in the Moncton downtown area;

C. As a sign of its support of the Centre and in consideration of the benefits the Centre would bring to its stakeholders, DMCI was one of the first entities to have committed to contribute funds towards the construction of the Centre and has been consistent in its support to the realization of the Centre.

D. DMCI is a private, non-profit business improvement corporation as defined under the New Brunswick *Business Improvement Areas Act*. The geographic boundaries of the Business Improvement Area for the City of Moncton (the "**BIA**") include the downtown area of the City of Moncton where the Centre is located.

E. DMCI exemplifies the purest form of economic development – the non-residential commercial property owners located in the BIA in the City of Moncton levy themselves on the assessed value of their property and that levy is turned over to DMCI for its operations and to meet the economic development purposes for which it was created, including the provision of services to all of DMCI's stakeholders and the investment of the levy back into all areas of the BIA.

F. Where this BIA levy is DMCI's sole source of funds, DMCI's ability to help fund the Centre is based solely on the incremental revenue anticipated from the New Development (as defined hereunder).

G. This MOU is intended to confirm the terms upon which DMCI will contribute funds to the City of Moncton for the Centre.

FOR AND IN CONSIDERATION OF the mutual covenants and conditions contained herein, the parties hereto agree as follows:

1. COMMITMENT.

1.1. DMCI commits to contribute the amount of **Three Million Seven Hundred and Fifty Thousand Dollars (\$3,750,000.00)** (the "**Commitment**") to be paid in non-consecutive instalments (collectively, the

"Instalments" and individually a **"Instalment"**) over a period not to exceed **thirty (30) years** (the **"Term"**) beginning on the Commencement Date, upon and subject to the terms and conditions set out hereunder.

1.2. Subject to Section 2 hereunder, the first Instalment shall be made on or before March 31, 2019 (the **"Commencement Date"**).

2. **TERMS AND CONDITIONS OF COMMITMENT.**

2.1. In this MOU, **"New Development"** means non-residential commercial construction developed in the BIA for which an increase in property tax assessment is reflected over the 2018 tax year (base assessment). For clarity:

2.1.1. **"New Development"** shall include at least one of the following elements:

- 2.1.1.1. Development of a new structure on existing vacant land in the BIA; or
- 2.1.1.2. Replacement of an existing structure that has been demolished in the BIA; or
- 2.1.1.3. Expansion of the physical dimensions of an existing structure in the BIA; or
- 2.1.1.4. Renovation or repurposing of an existing structure in the BIA, such as the conversion of a multi-tenant commercial space to a hotel and banqueting hall (16 Church Street), or the conversion of a bus terminal to a multi-tenant commercial space (29 Victoria Street), or the renovation of the V Hotel (42 Highfield).

2.1.2. In order to assist the parties in identifying New Developments, on an annual basis and prior to the payment of the Instalment for such year, the City shall provide DMCI with a list of developments in the BIA known to have been completed in the past year. For clarity, this is a non-exhaustive list and is not determinative of what is to be considered as New Development in any given year.

2.1.3. Notwithstanding the above, the parties acknowledge and agree that, with respect to the properties set out in Schedule A attached to this MOU, any BIA Levy collected on any increase in the respective property tax assessment over the amounts listed in Schedule A shall be included in the calculation of the cumulative increase in the amount of BIA Levy collected by DMCI from New Development for the purposes of this MOU.

2.2. DMCI has designated funds from the actual cumulative increase in the amount of BIA Levy collected by DMCI from New Development towards payment of the Instalments. Only the portion of the BIA Levy corresponding to the increase in property tax assessment over the assessment immediately prior to any New Development shall be designated by DMCI and used towards payment of the Instalments. For example, if a structure is assessed at \$400,000 and the owner builds an expansion thereby increasing its assessment to \$600,000, the BIA Levy on the \$200,000 increase in assessment shall be applied towards payment of the Instalments. Similarly, if a structure having an assessment of \$400,000 is demolished and replaced by a new structure, or is re-purposed and improved, and the new or re-purposed structure is assessed at \$600,000, only the BIA Levy on the \$200,000 increase in assessment shall be applied towards payment of the Instalments.

2.3. Schedule B attached to this MOU illustrates the projections provided by the City of Moncton for New Development as well as the annual instalments DMCI anticipates being in a position to make; provided the projections and assumptions upon which such instalments are based do transpire as projected and subject to the terms and conditions set out in this MOU. Schedule B is attached for illustrative purposes only and,

notwithstanding any amount illustrated or projected as an Instalment at any time, or from time to time, the actual Instalments made shall be based on the actual cumulative increase in the amount of BIA levy collected by DMCI from the New Development during the Term.

2.4. If, at the end of the Term, the New Development has not generated at least an increase in the BIA levy, such as projected in Schedule B, or from time to time, and DMCI is unable to meet the full Commitment without encroaching on its existing base (operations budget), or if any such increase is uncollectible for any other reason, including a governmental assessment freeze, tax holidays, tax breaks or incentives, or changes in legislation, regulations or by-laws, then DMCI shall be excused from the balance remaining unpaid towards the Commitment, unless DMCI's then governing body and the City of Moncton mutually agree to amend, modify, renew or extend the payment obligations of this MOU.

2.5. In no event shall DMCI be called upon to contribute more than the actual increase in the amount of BIA levy collected from New Development over the Term up to the maximum amount of the Commitment. If any non-recoverable taxes, fees, levies or charges are assessed on DMCI with respect to all or any portion of the Commitment, such non-recoverable taxes, fees, levies or charges shall be deemed to be included in the maximum amount of the Commitment, and not in addition to the Commitment.

2.6. The Commitment made in this MOU is limited to the existing BIA levy of \$0.16 per \$100.00 of assessment. Any future increase in the BIA levy, if any, shall be excluded from the Commitment and the terms of this MOU.

2.7. In the event of an expansion of the BIA boundaries, the BIA levy on developments existing in such expanded area as of the date of the expansion would be exempt from this MOU; however, the BIA levy on any New Development built in the expanded area after the date of the expansion would be subject to this MOU.

3. TERMINATION.

3.1. If the Centre is:

- 3.1.1. shut down before the end of the Term; or
- 3.1.2. no longer being operated as a multi-use sport and entertainment facility for the benefit of the citizens of the City of Moncton; or
- 3.1.3. no longer located within the boundaries of the BIA,

then this MOU shall be terminated and both parties shall be excused from any further obligations or performance hereunder.

3.2. If DMCI is:

- 3.2.1. wound up; or
- 3.2.2. dissolved; or
- 3.2.3. is no longer able or eligible to receive the BIA levy for any reason, including the council of the City of Moncton failing to approve its budget;

then this MOU shall be terminated and both parties shall be excused from any further obligations or performance hereunder.

4. **DONOR RECOGNITION.**

4.1. DMCI will be recognized for the full amount of the Commitment.

4.2. In consideration for the Commitment, the City agrees that DMCI's Imagine Campaign Beam (the "**Beam**") will be prominently displayed in a mutually agreeable location in either the Centre or the outdoor Plaza adjacent to the Centre as soon as reasonably practical following the execution of this MOU for at least the duration of the Term, unless otherwise mutually agreed to by the parties. The City of Moncton will use its best efforts to have the Beam placed inside the Centre or another secure area; however, if this is not logistically possible, the Beam will, at a minimum, be displayed in a location where it cannot easily be vandalized or damaged.

5. **AGREEMENT.**

5.1. The parties acknowledge that this MOU faithfully represents the original intent of the commitment to contribute.

5.2. The parties acknowledge and agree that this MOU is an agreement binding upon all parties and shall enure to the benefit of and be binding upon their respective legal representatives, administrators, successors, and permitted assigns.

5.3. This MOU is the entire agreement between DMCI and the City of Moncton and replaces any other written or verbal agreements, conditions and/or discussions with respect to this matter, except as stated herein and in any instruments and documents to be executed and delivered pursuant hereto.

6. **GENERAL.**

6.1. Recitals. The information set out in the recitals of this MOU is complete and accurate is deemed to be part of this MOU.

6.2. Amendment. This MOU can only be amended by mutual written consent of the two parties.

6.3. Assignment. This MOU shall not be assignable by any party except with the prior written consent of the other party.

6.4. Notices. Any notice, direction or other instrument required or permitted to be given to any party hereunder shall be in writing and shall be sufficiently given if delivered personally, or if sent by registered prepaid mail or courier or if transmitted by telecopier or other form of electronic communication tested prior to transmission to such party in each case to the applicable address set out below, or to such other address as any party may in the future be advised of by any other party:

To the City of Moncton at:

655 Main Street
Moncton, NB E1C 1E8
Attention: Mayor's Office
Email: mayor@moncton.ca
Fax: 506-853-3553

To Downtown Moncton Centre-ville Inc. at:

770 Main Street, Suite A 104

Moncton, NB E1C 1E7

Attention: Anne Poirier Basque, Executive Director

Email: abasque@downtownmoncton.com

Fax: 506-857-2908

6.5. Jurisdiction. This MOU shall be governed and construed in accordance with the laws of the Province of New Brunswick.

6.6. No Public Gift. Nothing contained in this MOU shall be deemed to be a gift or donation to the general public or for any public use or purpose whatsoever, it being the intention of the parties hereto and their successors and permitted assigns that nothing in this MOU, express or implied, shall confer upon any person, other than the parties hereto and their successors and permitted assigns, any rights or remedies under or by reason of this MOU.

6.7. Severability. The invalidity or unenforceability of any provision of this MOU shall not affect the validity or enforceability of any other provision hereof and any such invalid or unenforceable provision shall be deemed to be severable.

6.8. Actions on Non-Business Days. If any payment is required to be made or other action (including the giving of notice) is required to be taken pursuant to this MOU on a day which is not a Business Day, then such payment or action shall be considered to have been made or taken in compliance with this MOU if made or taken on the next succeeding Business Day.

6.9. Currency and payment obligations. Except if otherwise expressly provided in this MOU, all dollar amounts referred to in this MOU are stated in Canadian Dollars;

6.10. Schedules. The following Schedules annexed hereto are incorporated by reference and deemed to be part of this MOU:

6.11. Schedule A – Properties included as “New Development” existing prior to 2018 tax year; and

6.12. Schedule B – Projected Contribution Schedule.

7. **INTERPRETATION.**

7.1. Gender and Number. Unless the context otherwise requires, words importing the singular include the plural and *vice versa* and words importing gender include all genders.

7.2. Headings. The division of this MOU into articles, sections, subsections and paragraphs and the insertion of headings in this MOU are for convenience of reference only and shall not affect the interpretation of this MOU.

7.3. Section References. Unless otherwise indicated, all references to an “Article”, “Section” or “paragraph” followed by a number and/or a letter refer to the specified Article, Section or paragraph of this MOU.

7.4. References to this MOU. The terms "this MOU", "hereof", "herein" and "hereunder" and similar expressions refer to this MOU (including any Schedules hereto) and not to any particular Article, Section or other portion hereof and include any agreement or instrument supplementary or ancillary hereto.

7.5. Words of Inclusion. Wherever the words "include", "includes" or "including" are used in this MOU, they shall be deemed to be followed by the words "without limitation" and the words following "include", "includes" or "including" shall not be considered to set forth an exhaustive list.

7.6. Business Day. "**Business Day**" means any day on which commercial banks are open for business in New Brunswick other than a Saturday, a Sunday or a day observed as a holiday in New Brunswick under either the laws of the Province of New Brunswick or the federal laws of Canada applicable therein;

8. Counterparts. This MOU may be executed in as many counterparts as may be necessary and transmitted by facsimile or other form of electronic transmission, and each such counterpart shall be deemed to be an original and all of which together shall constitute one and the same agreement and it shall not be necessary in making proof of this MOU to produce or account for more than one such counterpart or to produce an originally executed counterpart.

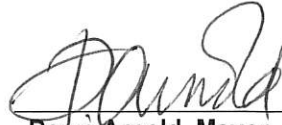
[signature pages to follow]

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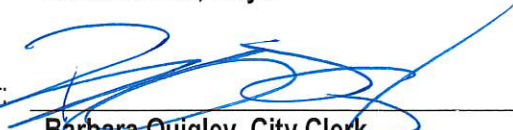

IN WITNESS WHEREOF the City of Moncton has executed this MOU this 5 day of February, 2019.

City of Moncton

Per:

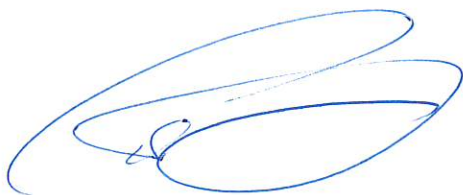

Dawn Arnold, Mayor

Per:


Barbara Quigley, City Clerk



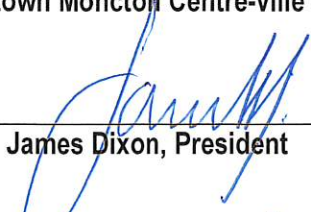
IN WITNESS WHEREOF DMCI has executed this MOU this 30th day of January, 2019.



Cathy Guas, Treasurer DMCI

Downtown Moncton Centre-ville Inc.

Per: _____


James Dixon, President

Per: _____


Anne Poirier Basque, Executive Director

Schedule A

Properties included as "New Development" existing prior to 2018 tax year

Property address	Tax base year	Assessment amount
840 Main Street	2017	\$268,600
55 Queen Street	2017	\$1,120,000
16 Church Street	2017	\$599,700
29 Victoria Street	2018	\$970,000
171 Lutz Street	2015	\$685,600

**Downtown Moncton Centreville Inc.
Projected Centre Donation Schedule**

BIA Projected New Assessment				Schedule of Anticipated Donations					Schedule B - Projected Contribution Schedule		
Year	New Development	Cummulative	Projected Levy	Year	Pymt #	Opening Balance Available	Current Levy	Anticipated Donations	Closing Balance Available	Cummulative Donations	Outstanding Commitment
			\$ 0.16								
1	2019	6,000,000	9,600	2019	1	266,985	9,600	250,000	26,585	250,000	3,500,000
2	2020	35,000,000	65,600	2020	2	26,585	65,600	75,000	17,185	325,000	3,425,000
3	2021	15,000,000	89,600	2021	3	17,185	89,600	75,000	31,785	400,000	3,350,000
4	2022	15,000,000	113,600	2022	4	31,785	113,600	100,000	45,385	500,000	3,250,000
5	2023	15,000,000	137,600	2023	5	45,385	137,600	125,000	57,985	625,000	3,125,000
6	2024	15,000,000	161,600	2024	6	57,985	161,600	175,000	44,585	800,000	2,950,000
7	2025	6,000,000	171,200	2025	7	44,585	171,200	175,000	40,785	975,000	2,775,000
8	2026	6,200,000	181,120	2026	8	40,785	181,120	175,000	46,905	1,150,000	2,600,000
9	2027	6,400,000	191,360	2027	9	46,905	191,360	200,000	38,265	1,350,000	2,400,000
10	2028	6,600,000	201,920	2028	10	38,265	201,920	200,000	40,185	1,550,000	2,200,000
11	2029	6,800,000	212,800	2029	11	40,185	212,800	200,000	52,985	1,750,000	2,000,000
12	2030	7,000,000	224,000	2030	12	52,985	224,000	225,000	51,985	1,975,000	1,775,000
13	2031	7,200,000	235,520	2031	13	51,985	235,520	225,000	62,505	2,200,000	1,550,000
14	2032	7,400,000	247,360	2032	14	62,505	247,360	250,000	59,865	2,450,000	1,300,000
15	2033	7,600,000	259,520	2033	15	59,865	259,520	275,000	44,385	2,725,000	1,025,000
16	2034	7,800,000	272,000	2034	16	44,385	272,000	275,000	41,385	3,000,000	750,000
17	2035	8,000,000	284,800	2035	17	41,385	284,800	275,000	51,185	3,275,000	475,000
18	2036	8,200,000	297,920	2036	18	51,185	297,920	300,000	49,105	3,575,000	175,000
19	2037	8,400,000	311,360	2037	19	49,105	311,360	175,000	185,465	3,750,000	-
20	2038	8,600,000	325,120	2038	20	185,465	325,120	-	510,585	3,750,000	-

3,993,600
266,985
4,260,585