



REPORT

TO: Mayor Caul and Council

FROM: Jason Kabel, Manager of Community Services

DATE: October 4, 2019

RE: Townshend Theatre Joint-Use Agreement

In October 2014 Council approved a renewal of the Townshend Theatre joint-use agreement between the Rainy River District School Board, the Corporation of the Town of Fort Frances and Confederation College of Applied Arts and Technology for a five year term. The Townshend Theatre Advisory Committee has recently done a review of the agreement and has proposed 1 minor reference change (article 7) to the agreement (attached).

The principal responsibilities of each party in the agreement are as follows:

5. The Town, at its expense, shall be primarily responsible for the management of the Theatre, including the establishment of the charges for the use of the Theatre and the booking of the use of the Theatre. The Board, in conjunction with its maintenance of the Multi-Use Education Facility and at its expense, shall be primarily responsible for the day to day operation, maintenance and caretaking of the Theatre and shall pay all operating costs, including, but not limited to snow removal, janitorial and utility charges. The College will become a partner through active participation in the Theatre Management Advisory Committee.

Recommendation

The Community Services Executive Committee recommends to Council to sanction the renewal of the Townshend Theatre joint-use agreement between the Rainy River District School Board, the Corporation of the Town of Fort Frances, and Confederation College of Applied Arts and Technology for a term of five (5) years with appropriate execution and forthcoming bylaw.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "J. Kabel".

Jason Kabel

<p>Council approval of this report will agree with the recommendation of the Community Services Executive Committee to sanction the renewal of the Townshend Theatre joint-use agreement as attached for a term of five (5) years with appropriate execution and forthcoming bylaw.</p>
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AGREEMENT

Between

RAINY RIVER DISTRICT SCHOOL BOARD
(hereinafter called the "Board")

And

THE CONFEDERATION COLLEGE OF APPLIED ARTS AND TECHNOLOGY
(hereinafter called the "College")

And

CORPORATION OF THE TOWN OF FORT FRANCES
(hereinafter called the "Town")

WHEREAS the Board and the College have constructed a Multi-Use Facility on lands within the Town of Fort Frances;

AND WHEREAS the Town has constructed a theatre for the performing arts (hereinafter called the "Theatre") within the Town of Fort Frances;

AND WHEREAS the Town, the Board and the College acknowledge that the existence of a theatre in conjunction with a secondary/post-secondary school is beneficial to the School and the Theatre;

AND WHEREAS the Town, the Board and the College acknowledge that significant savings have been achieved for each Party through the construction of a Multi-Use Education Facility;

AND WHEREAS the Parties wished to enter into an agreement to provide for the ownership, construction, maintenance, operation and management of the Theatre;

AND WHEREAS this agreement is entered into pursuant to the provisions of Section 183 of the *Education Act*, R.S.O. 1995 C. E2.

NOW THEREFORE witnessed that in consideration of the mutual covenants herein contained and other good and valuable consideration, the Parties agree as follows:

1. Funding for the Community Auditorium project is as per the following resolution approved by the Corporation of the Town of Fort Frances (February 24, 1997) as follows:

“That this Council commit to financing the net cost of construction of a new Community Auditorium Facility, the net cost of which is to be determined as follows:

Actual Cost capped at \$2,000,000 less any senior government funding, less a minimum of \$500,000 to be raised by the Community Auditorium Committee.”

Construction of the Community Auditorium will be in conjunction with the construction of a new Multi-Use Facility on the lands described in Schedule “A”.

2. In consideration of the Town’s substantial financial contribution towards the capital cost of construction of the Theatre, it is agreed that the Town shall be entitled to the use of the Theatre in priority to the Board and the College; and, that the Board and the College shall be entitled to the use of the Theatre as set out herein.

OWNERSHIP

3. It is understood and agreed that the Board shall own the land and buildings upon which the Theatre is to be constructed subject to the provisions hereinafter set out which shall prevail in the event the Board no longer requires the Multi-Use Facility for education purposes. In the event, it is understood and agreed that all equipment, furnishings and fixtures placed in the Theatre shall remain with the Theatre and shall thereupon be owned by the Town unless expressed arrangements are otherwise made at the time of the acquisition of the equipment, furnishings and fixtures.
4. In the event the Board and the College determines that they no longer require the Multi-Use Facility for education purposes, the Board agrees that the Town shall, immediately thereupon be deemed to have leased that portion of the premises that comprises the Theatre together with that portion of the parking lot and driveway necessary to serve the Theatre for the sum of \$10.00 per annum for a term of fifty (50) years to commence when the Board and the College cease to use the Multi-Use Facility for their education programs. The Board and the College agree that they shall not make any application for rezoning for the remainder of the Multi-Use Facility lands for any purpose which is deemed by the Town to be incompatible with the Town’s use of the Theatre lands.

MANAGEMENT AND OPERATION

5. The Town, at its expense, shall be primarily responsible for the management of the Theatre, including the establishment of the charges for the use of the Theatre and the booking of the use of the Theatre. The Board, in conjunction with its maintenance of the Multi-Use Education Facility and at its expense, shall be primarily responsible for the day to day operation, maintenance and caretaking of the Theatre and shall pay all operating costs, including, but not limited to snow removal, janitorial and utility charges. The College will

become a partner through active participation in the Theatre Management Advisory Committee.

6. The Town, when operating the Theatre, will be exempt from Board Policy 6.10, Community Use of School Facilities and Grounds. The schedule of charges set out in Policy 6.10 shall not apply except that the Town agrees to be responsible for direct additional caretaking costs (being the costs not contemplated by paragraph 5 hereof) incurred by the Board as a result of the Town's use of the Theatre or as a result of a use authorized by the Town (other than the Board's use). These costs shall be invoiced by the Board and paid by the Town.
7. The Town shall be entitled to all rental revenue from the Theatre it being understood that such revenue, will be applied to defray the costs to be paid by the Town pursuant to paragraph 5 hereof and the surplus, if any, shall be retained and allocated for Theatre purposes. Notwithstanding the generality of the foregoing, in the event the Board or the College wishes to undertake special fundraising events to take place within the Theatre outside of regular school hours, the Board or the College may retain such revenue provided the ticket surcharge, ~~as set in paragraph 13~~, is remitted to the Town. In such event, the Board or the College agrees to advise the Town of the nature of such special fundraising events prior to their occurrence.
8. In the event that special temporary services and/or facilities not normally available for the operation of the Theatre are required, such facilities and services, including the caretaking services not provided pursuant to paragraph 5 hereof, shall be paid for by the Party requiring same. It is expressly understood and agreed by the Parties that the lighting and sound equipment shall only be operated by competent persons as approved by the Town, which approval will not unreasonably be withheld and which approval will be given on the basis of competency and not given or withheld on the basis of union membership. It is further agreed that nothing may be permanently installed in the Theatre by either Party without the written consent of the other Party.
9. At all times when the Board has the exclusive use of the Theatre, it shall provide competent and adequate supervision to ensure the safety of the Town and the Board's property and of persons using the Theatre. Similarly, at all times when the Town or the College has the exclusive use of the Theatre, it shall provide competent and adequate supervision to ensure the safety of the Town and the Board's property and of persons using the Theatre.
10. It is understood and agreed that the Theatre shall be available for use each and every day between the hours of 8:00 a.m. and 1:00 a.m. and that the Town shall have the right to book the use of the Theatre during such hours. Notwithstanding the generality of the foregoing, prior to September 1 of each year, the Town and the Board agree that a representative of the Town and the Principal (or designate) shall establish a schedule of the Board's use of the Theatre for the next 12 months. Usage at the Theatre will be assigned according to the following priorities: a) events b) rehearsal of events c) ongoing practices and classes. The schedule shall be shared with the Theatre Management Advisory

Committee. It is generally understood and agreed that for the purposes of establishing such schedule, the Board shall have the option to schedule the use of the Theatre from 8:00 a.m. to 6:00 p.m. on each school day, as outlined in the school year calendar, provided by the Board. The Board's use of the Theatre shall be at no cost to the Board. In the event of a dispute or conflict with respect to the booking of the Theatre, the decision of the Theatre Management Advisory Committee as hereinafter defined shall be final.

11. The Town agrees that in the event it books the use of the Theatre during regular school hours, care shall be taken that such use shall not interrupt or cause a disturbance to any regular Multi-use Education program.
12. Persons using the Theatre shall not be allowed on Board or College property during the Town's use of the Theatre except as may be reasonably necessary to permit the use of the Theatre or as may be expressly agreed upon from time to time.
13. Prior to September 30 in each year, the Town and the Board agree that a representative of the Town and a representative of the Board shall meet to establish a recommended operating and capital budget for the Theatre which budget shall be submitted for approval to the Council of the Town and the Trustees of the Board. It is expressly understood and agreed that the Board and the Town shall contribute, as budgeted from time to time, towards the capital costs of maintaining and equipping the Theatre.
14. In order to assist with the funding of future capital requirements of the Theatre, the Town and the Board agree that whenever there is an admission charged for an event held at the Theatre, a surcharge in an amount as will be determined from time to time through the budget approval process, shall be applied at the time of sale of each ticket and the amount collected shall be held in a reserve account by the Town to be applied only to capital expenditures for the Theatre. Any dispute over the application of the "surcharge" shall be referred to the Theatre Management Advisory Committee for resolution.
15. The Town, the College and the Board mutually indemnify and hold each other harmless and their respective servants and agents from and in respect of all manner of claims, actions, demands, and suits made against either of them arising out of or in connection with their use of the Theatre, together with all costs and expenses related thereto including legal costs, unless due to the other party's negligence or that of its respective servants or agents. The Board, the College and the Town agree to keep in place appropriate policies of insurance in respect of the Theatre.
16. The Town and the Board agree that there shall be established a Theatre Management Advisory Committee to provide advice to the Town, The College and the Board from time to time with respect to the operation and needs of the Theatre. The Theatre Management Advisory Committee shall be comprised of one Rainy River District School Board Trustee and one member of the Board staff to be appointed by the Board; one member of the Council of the Town of Fort Frances and one member of Town staff to be appointed by the

Town; two members of the community to be appointed by the Town; and, one member of Confederation College. This Committee shall meet at least quarterly. It is expressly understood that such Committee shall have no budget responsibility.

17. In the event there is a difference arising as between the Town and the Board in respect of this Agreement which the Parties themselves cannot resolve, the dispute shall be resolved by arbitration under the *Arbitrations Act*, as amended from time to time. Such differences shall be determined by a single arbitrator jointly appointed by the Parties and failing agreement in such appointment, the arbitrator shall be appointed as provided in the *Arbitrations Act*.
18. No rights under this Agreement are assignable and neither Party shall assign any of its rights unless agreed to by all Parties.
19. The term of this Agreement shall be five (5) years and shall be reviewed and renewed for further terms of five (5) years unless terminated on mutual consent by both the Board and the Town. The Town shall immediately upon such termination, be deemed to have leased the Theatre upon the terms and conditions set out in paragraph 7 and shall be entitled to take immediate possession of the Theatre.
20. This Agreement may be reviewed by all Parties at any time and any term of the Agreement may be amended or waived at any time upon mutual consent of the Parties. The failure of any Party to enforce any term or obligation of the other shall not be deemed to be a waiver of such term or obligation, or permission for any subsequent breach of the same, and either Party may at any time enforce such term or obligation. The waiver by either Party of any breach of any term or obligation hereof shall not be deemed to be a waiver of such term or obligation with respect to any subsequent breach.
21. Any notice required to be given under this Agreement shall be deemed to have been given if sent by registered mail, postage prepaid, or by telephone facsimile transmission, respectively addressed.

In the case of the Board to:

The Rainy River District School Board
522 Second Street East
Fort Frances, ON P9A 1N4

Attention: Director of Education

Telephone Facsimile: 807-274-5078

In the case of the Town to:

The Corporation of the Town of Fort Frances
P.O. Box 38
Fort Frances, ON P9A 3M5

Attention: Chief Administrative Officer

Telephone Facsimile: 807-274-8479

In the case of the College to:

Confederation College of Applied Arts and Technology
P.O. Box 398, Postal Station F
Thunder Bay, ON P7C 4W1

Attention: Vice President of Student and Corporate Services

Telephone Facsimile: 807-623-4675

or such other address or telephone/facsimile number as the Parties may respectively notify each other in writing, and such notice shall be deemed to have been received, if mailed, on the fourth business day next following the mailing thereof and if sent by telephone facsimile transmission, on the business day next following the telephone facsimile transmission thereof.

22. This Agreement shall become an Addendum to the existing Multi-Use Facility Agreement, March 1, 1994, between the College and the Board.
23. This Agreement shall be binding upon and ensure to the benefit of the Parties and their respective successors.

IN WITNESS WHEREOF the Parties have hereunto set their hands and seals or have hereunto affixed their corporate seals attested by the hands of the duly authorized officers of the Parties.

SIGNED THIS _____ DAY OF _____, 2019.

Chair, Rainy River District School Board

Director of Education, Rainy River District School Board

Mayor, Corporation of the Town of Fort Frances

Chief Administrative Officer, Corporation of the Town of Fort Frances

President, Confederation College of Applied Arts and Technology

SCHEDULE A

TOWN OF FORT FRANCES
320 PORTAGE AVENUE
FORT FRANCES, ON
Phone: 807.274.5323

06-May-13
 2:56:35 PM

PROPERTY INFORMATION FOR: 59-12-010-004 -00700-0000

Owner & Mailing Address RAINY RIVER DISTRICT SCHOOL 522SECOND ST E FORT FRANCES ON P9A 1N4	Property Location Information 440 MCIRVINE RD Fort Frances Frontage 0 Depth 0 Area 19.56 PT RIV R LOT 39 TO 40 PCL;19244
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Notes

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Code	Description
LIVING	Living

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Code	Bylaw	Description
I		Institutional

Structures on Prooerty

Year	Code	DescnJtion	Swreys rüllHilf""	Area Total	Bed.	Bathrooms Full Half	Floor Area 1 2 3
1973	1973	650 Secondary School	2	0	60568		0

Pro er. Documents

Document ID	Date	Document T e	Unit	Status	Status Manual
2011023	09-May -11	Institutiona l Alteration/Renovation- Buildin MCIR	COMPLETE	Issued	