

# TOWN OF FORT FRANCES

## Community Services Executive Committee

AGENDA - July 6, 2015 10:30 AM

MEETING - '52 Canadians Meeting Room

Page

### CALL TO ORDER

### DISCLOSURE OF CONFLICT OF INTEREST AND THE GENERAL NATURE THEREOF

### APPROVAL OF PREVIOUS COMMITTEE MINUTES

3.1 Community Services Executive Committee Meeting - June 15, 2015 2 - 3

### ITEMS REFERRED FROM COUNCIL

4.1 NIL

### NEW BUSINESS

5.1 Seniors Community Grant 4 - 25

5.2 Semi-annual report 26 - 28

5.3 Memorial Sports Centre - Concessionaire Agreement 29 - 42

### NON-AGENDA ITEMS

### INFORMATION

7.1 Next Meeting - **Tuesday, August 4, 2015 @ 11:00am**

TOWN OF FORT FRANCES

MINUTES

SESSION NO. # 0012

June 15, 2015

The meeting of Community Services Executive Committee of the Town of Fort Frances was held in the '52 Canadians Meeting Room on June 15, 2015 from 10:30 a.m. to 11:26 a.m.

PRESENT: Ken Perry - Chairman, John Albanese - Councillor, June Caul - Councillor, Jason Kabel - Manager of Community Services

**1 CALL TO ORDER (Session #0012)**

- 1.1 The meeting was called to order by K. Perry - Chairman at 10:30am. J. Kabel recorded the minutes of the meeting.

**2 DISCLOSURE OF CONFLICT OF INTEREST AND THE GENERAL NATURE THEREOF**

- 2.1 NIL

**3 APPROVAL OF AGENDA (Call for non-agenda items)**

**4 APPROVAL OF PREVIOUS COMMITTEE MINUTES**

- 4.1 Community Services Executive Committee Meeting - June 1, 2015 - Approved as circulated.

**5 ITEMS REFERRED FROM COUNCIL**

- 5.1 NIL

**6 NEW BUSINESS**

- 6.1 Memorial Sports Centre summer hours - verbal - the committee gave direction to pursue the level of interest of patrons to use the facility on the weekends for an additional 4 hours to see if concerns expressed by users will be mitigated.
- 6.2 Canada Day - an update was given by J. Kabel on the Canada Day schedule of events.

**7 IN-CAMERA**

- 7.1 Personnel Matter - proceed as directed.

**8 NON-AGENDA ITEMS**

- 8.1 2015 Community Museum Operating Grant (CMOG) Application - Approved for recommendation to Council to authorize the submission of the 2015 Community Museum Operating Grant (CMOG) to the Ministry of Tourism, Culture, and Sport by Museum Curator, Sherry George and also endorse signing of the grant application.

**9 INFORMATION**

- 9.1 Next meeting - July 6, 2015

---

K. Perry, Executive Committee Chair

---

J. Kabel, Manager of Community Services

**THE AGREEMENT** effective as of the 30<sup>th</sup> day of June, 2015.

**B E T W E E N :**

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO  
as represented by The Minister Responsible for Seniors  
Affairs**

**(the “Province”)**

**- and -**

**SISTER BETTY KENNEDY SENIOR CENTRE - TOWN OF FORT  
FRANCES**

**(the “Recipient”)**

**BACKGROUND:**

The Province funds projects similar to the Project.

The Recipient has applied to the Province for funds to assist the Recipient in carrying out the Project and the Province wishes to provide such funds.

**CONSIDERATION:**

In consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are expressly acknowledged, the Parties agree as follows:

**ARTICLE 1  
INTERPRETATION AND DEFINITIONS**

**1.1 Interpretation.** For the purposes of interpretation:

- (a) words in the singular include the plural and vice-versa;
- (b) words in one gender include all genders;
- (c) the background and the headings do not form part of the Agreement; they are for reference only and shall not affect the interpretation of the Agreement;
- (d) any reference to dollars or currency shall be to Canadian dollars and currency; and
- (e) “include”, “includes” and “including” shall not denote an exhaustive list.

**1.2 Definitions.** In the Agreement, the following terms shall have the following meanings:

**“Agreement”** means this agreement entered into between the Province and the Recipient and includes all of the schedules listed in section 28.1 and any amending agreement entered into pursuant to section 34.2.

**“BPSAA”** means the *Broader Public Sector Accountability Act, 2010* (Ontario), including any directives issued pursuant to that Act.

**“Budget”** means the budget attached to the Agreement as Schedule “B”.

**“Effective Date”** means the date set out at the top of the Agreement.

**“Event of Default”** has the meaning ascribed to it in section 14.1.

**“Force Majeure”** has the meaning ascribed to it in Article 26.

**“Funding Year”** means:

- (a) in the case of the first Funding Year, the period commencing on the Effective Date and ending on the following March 31; and
- (b) in the case of Funding Years subsequent to the first Funding Year, the period commencing on April 1 following the end of the previous Funding Year and ending on the following March 31.

**“Funds”** means the money the Province provides to the Recipient pursuant to the Agreement.

**“Indemnified Parties”** means her Majesty the Queen in right of Ontario, her ministers, agents, appointees and employees.

**“Maximum Funds”** means **\$7,496.80**.

**“Notice”** means any communication given or required to be given pursuant to the Agreement.

**“Notice Period”** means the period of time within which the Recipient is required to remedy an Event of Default, and includes any such period or periods of time by which the Province considers it reasonable to extend that time.

**“Parties”** means the Province and the Recipient.

**“Party”** means either the Province or the Recipient.

**“Project”** means the undertaking described in Schedule “A”.

**“Reports”** means the reports described in Schedule “D”.

**“Timelines”** means the Project schedule set out in Schedule “A”.

## **ARTICLE 2**

### **REPRESENTATIONS, WARRANTIES AND COVENANTS**

- 2.1 **General.** The Recipient represents, warrants and covenants that:
- (a) it is, and shall continue to be for the term of the Agreement, a validly existing legal entity with full power to fulfill its obligations under the Agreement;
  - (b) it has, and shall continue to have for the term of the Agreement, the experience and expertise necessary to carry out the Project; and
  - (c) unless otherwise provided for in the Agreement, any information the Recipient provided to the Province in support of its request for funds (including information relating to any eligibility requirements) was true and complete at the time the Recipient provided it and shall continue to be true and complete for the term of the Agreement.
- 2.2 **Execution of Agreement.** The Recipient represents and warrants that:
- (a) it has the full power and authority to enter into the Agreement; and
  - (b) it has taken all necessary actions to authorize the execution of the Agreement.
- 2.3 **Governance.** The Recipient represents, warrants and covenants that it has, and shall maintain, in writing, for the period during which the Agreement is in effect:
- (a) a code of conduct and ethical responsibilities for all persons at all levels of the Recipient's organization;
  - (b) procedures to ensure the ongoing effective functioning of the Recipient;
  - (c) decision-making mechanisms;
  - (d) procedures to provide for the prudent and effective management of the Funds;
  - (e) procedures to enable the successful completion of the Project;
  - (f) procedures to enable the timely identification of risks to the completion of the Project and strategies to address the identified risks;
  - (g) procedures to enable the preparation and delivery of all Reports required pursuant to Article 7; and
  - (h) procedures to deal with such other matters as the Recipient considers necessary to ensure that the Recipient carries out its obligations under the Agreement.

- 2.4 **Supporting Documentation.** Upon request, the Recipient shall provide the Province with proof of the matters referred to in this Article 2.

### **ARTICLE 3 TERM OF THE AGREEMENT**

- 3.1 **Term.** The term of the Agreement shall commence on the Effective Date and shall expire on [THIS DATE SHOULD REFLECT PROJECT END DATE + FINAL REPORT DATE BUT NO LATER THAN March 31, 2016] unless terminated earlier pursuant to Article 12, Article 13 or Article 14.

### **ARTICLE 4 FUNDS AND CARRYING OUT THE PROJECT**

- 4.1 **Funds Provided.** The Province shall:
- (a) provide the Recipient up to the Maximum Funds for the purpose of carrying out the Project;
  - (b) provide the Funds to the Recipient in accordance with the payment schedule attached to the Agreement as Schedule “C”; and
  - (c) deposit the Funds into an account designated by the Recipient provided that the account:
    - (i) resides at a Canadian financial institution; and
    - (ii) is in the name of the Recipient.
- 4.2 **Limitation on Payment of Funds.** Despite section 4.1:
- (a) the Province is not obligated to provide any Funds to the Recipient until the Recipient provides the insurance certificate or other proof as provided for in section 11.2;
  - (b) the Province is not obligated to provide instalments of Funds until it is satisfied with the progress of the Project;
  - (c) the Province may adjust the amount of Funds it provides to the Recipient in any Funding Year based upon the Province’s assessment of the information provided by the Recipient pursuant to section 7.1; and
  - (d) if, pursuant to the provisions of the *Financial Administration Act* (Ontario), the Province does not receive the necessary appropriation from the Ontario Legislature for payment under the Agreement, the Province is not obligated to make any such payment, and, as a consequence, the Province may:
    - (i) reduce the amount of the Funds and, in consultation with the Recipient, change the Project; or

- (ii) terminate the Agreement pursuant to section 13.1.

**4.3 Use of Funds and Project.** The Recipient shall:

- (a) carry out the Project:
  - (i) in accordance with the terms and conditions of the Agreement;  
and
  - (ii) in compliance with all federal and provincial laws and regulations, all municipal by-laws, and any other orders, rules and by-laws related to any aspect of the Project;
- (b) use the Funds only for the purpose of carrying out the Project; and
- (c) spend the Funds only in accordance with the Budget.

**4.4 No Changes.** The Recipient shall not make any changes to the Project, the Timelines and/or the Budget without the prior written consent of the Province.

**4.5 Interest Bearing Account.** If the Province provides Funds to the Recipient prior to the Recipient's immediate need for the Funds, the Recipient shall place the Funds in an interest bearing account in the name of the Recipient at a Canadian financial institution.

**4.6 Interest.** If the Recipient earns any interest on the Funds:

- (a) the Province may deduct an amount equal to the interest from any further instalments of Funds; or
- (b) the Recipient shall pay an amount equal to the interest to the Province as directed by the Province.

**4.7 Maximum Funds.** The Recipient acknowledges that the Funds available to it pursuant to the Agreement shall not exceed the Maximum Funds.

**4.8 Rebates, Credits and Refunds.** The Recipient acknowledges that the amount of Funds available to it pursuant to the Agreement is based on the actual costs to the Recipient, less any costs (including taxes) for which the Recipient has received, will receive, or is eligible to receive, a rebate, credit or refund.

**ARTICLE 5**  
**ACQUISITION OF GOODS AND SERVICES, AND DISPOSAL OF ASSETS**

**5.1 Acquisition.** Subject to section 32.1, if the Recipient acquires supplies, equipment or services with the Funds:

- (a) it shall do so through a process that promotes the best value for money; and



- (b) if the estimated cost of the supplies, equipment or services exceeds \$5,000, the Recipient shall obtain at least three written quotes unless:
  - (i) the supplies, equipment or services the Recipient is purchasing is specialized and is not readily available; or
  - (ii) the Recipient has previously researched the market for a similar purchase and knows prevailing market costs for the equipment, services or supplies.

5.2 **Disposal.** The Recipient shall not, without the Province's prior written consent, sell, lease or otherwise dispose of any asset purchased with the Funds or for which Funds were provided, the cost of which exceeded \$1,000 at the time of purchase.

## **ARTICLE 6 CONFLICT OF INTEREST**

6.1 **No Conflict of Interest.** The Recipient shall carry out the Project and use the Funds without an actual, potential or perceived conflict of interest.

6.2 **Conflict of Interest Includes.** For the purposes of this Article, a conflict of interest includes any circumstances where:

- (a) the Recipient; or
- (b) any person who has the capacity to influence the Recipient's decisions,

has outside commitments, relationships or financial interests that could, or could be seen to, interfere with the Recipient's objective, unbiased and impartial judgment relating to the Project and the use of the Funds.

6.3 **Disclosure to Province.** The Recipient shall:

- (a) disclose to the Province, without delay, any situation that a reasonable person would interpret as either an actual, potential or perceived conflict of interest; and
- (b) comply with any terms and conditions that the Province may prescribe as a result of the disclosure.

## **ARTICLE 7 REPORTING, ACCOUNTING AND REVIEW**

7.1 **Preparation and Submission.** The Recipient shall:

- (a) submit to the Province at the address provided in section 18.1, all Reports in accordance with the timelines and content requirements set out in Schedule "D", or in a form as specified by the Province from time to time;

- (b) submit to the Province at the address provided in section 18.1, any other reports as may be requested by the Province in accordance with the timelines and content requirements specified by the Province;
- (c) ensure that all Reports and other reports are completed to the satisfaction of the Province; and
- (d) ensure that all Reports and other reports are signed on behalf of the Recipient by an authorized signing officer.

**7.2 Record Maintenance.** The Recipient shall keep and maintain:

- (a) all financial records (including invoices) relating to the Funds or otherwise to the Project in a manner consistent with generally accepted accounting principles; and
- (b) all non-financial documents and records relating to the Funds or otherwise to the Project.

**7.3 Inspection.** The Province, its authorized representatives or an independent auditor identified by the Province may, at its own expense, upon twenty-four hours' Notice to the Recipient and during normal business hours, enter upon the Recipient's premises to review the progress of the Project and the Recipient's expenditure of the Funds and, for these purposes, the Province, its authorized representatives or an independent auditor identified by the Province may:

- (a) inspect and copy the records and documents referred to in section 7.2; and
- (b) conduct an audit or investigation of the Recipient in respect of the expenditure of the Funds and/or the Project.

**7.4 Disclosure.** To assist in respect of the rights set out in section 7.3, the Recipient shall disclose any information requested by the Province, its authorized representatives or an independent auditor identified by the Province, and shall do so in a form requested by the Province, its authorized representatives or an independent auditor identified by the Province, as the case may be.

**7.5 No Control of Records.** No provision of the Agreement shall be construed so as to give the Province any control whatsoever over the Recipient's records.

**7.6 Auditor General.** For greater certainty, the Province's rights under this Article are in addition to any rights provided to the Auditor General pursuant to section 9.1 of the *Auditor General Act* (Ontario).

## **ARTICLE 8 CREDIT**

- 8.1 **Publicity Restrictions:** As per Schedule 'E' of this agreement, the Recipient will not make any public announcement, news release, advertising or other form of publicity regarding the Funds until notice of the publicity has been received by the Province.
- 8.2 **Acknowledge Support.** Unless otherwise directed by the Province, the Recipient shall, in a form approved by the Province, acknowledge the support of the Province in any publication of any kind, written or oral, relating to the Project.
- 8.3 **Publication.** The Recipient shall indicate, in any of its publications, of any kind, written or oral, relating to the Project, that the views expressed in the publication are the views of the Recipient and do not necessarily reflect those of the Province.

## **ARTICLE 9 FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY**

- 9.1 **FIPPA.** The Recipient acknowledges that the Province is bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province in connection with the Project or otherwise in connection with the Agreement may be subject to disclosure in accordance with that Act.

## **ARTICLE 10 INDEMNITY**

- 10.1 **Indemnification.** The Recipient hereby agrees to indemnify and hold harmless the Indemnified Parties from and against any and all liability, loss, costs, damages and expenses (including legal, expert and consultant fees), causes of action, actions, claims, demands, lawsuits or other proceedings, by whomever made, sustained, incurred, brought or prosecuted, in any way arising out of or in connection with the Project or otherwise in connection with the Agreement, unless solely caused by the negligence or wilful misconduct of the Province.

## **ARTICLE 11 INSURANCE**

- 11.1 **Recipient's Insurance.** The Recipient represents and warrants that it has, and shall maintain for the term of the Agreement, at its own cost and expense, with insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, all the necessary and appropriate insurance that a prudent person carrying out a project similar to the Project would maintain, including commercial general liability insurance on an occurrence basis for third party bodily injury, personal injury and property damage, to an inclusive limit of not less than two million dollars (\$2,000,000) per occurrence. The policy shall include the following:
- (a) the Indemnified Parties as additional insureds with respect to liability arising in the course of performance of the Recipient's obligations under, or otherwise in connection with, the Agreement;

- (b) a cross-liability clause;
  - (c) contractual liability coverage; and
  - (d) a 30 day written notice of cancellation, termination or material change.
- 11.2 **Proof of Insurance.** The Recipient shall provide the Province with certificates of insurance, or other proof as may be requested by the Province, that confirms the insurance coverage as provided for in section 11.1. Upon the request of the Province, the Recipient shall make available to the Province a copy of each insurance policy.

## **ARTICLE 12 TERMINATION ON NOTICE**

- 12.1 **Termination on Notice.** The Province may terminate the Agreement at any time upon giving at least 30 days Notice to the Recipient.
- 12.2 **Consequences of Termination on Notice by the Province.** If the Province terminates the Agreement pursuant to section 12.1, the Province may:
- (a) cancel all further instalments of Funds;
  - (b) demand the repayment of any Funds remaining in the possession or under the control of the Recipient; and/or
  - (c) determine the reasonable costs for the Recipient to wind down the Project, and:
    - (i) permit the Recipient to offset the costs determined pursuant to section 12.2(c), against the amount owing pursuant to section 12.2(b); and/or
    - (ii) subject to section 4.7, provide Funds to the Recipient to cover the costs determined pursuant to section 12.2(c).

## **ARTICLE 13 TERMINATION WHERE NO APPROPRIATION**

- 13.1 **Termination Where No Appropriation.** If, as provided for in section 4.2(d), the Province does not receive the necessary appropriation from the Ontario Legislature for any payment the Province is to make pursuant to the Agreement, the Province may terminate the Agreement immediately by giving Notice to the Recipient.
- 13.2 **Consequences of Termination Where No Appropriation.** If the Province terminates the Agreement pursuant to section 13.1, the Province may:
- (a) cancel all further instalments of Funds;
  - (b) demand the repayment of any Funds remaining in the possession or under the control of the Recipient; and/or

- (c) determine the reasonable costs for the Recipient to wind down the Project and permit the Recipient to offset such costs against the amount owing pursuant to section 13.2(b).
- 13.3 **No Additional Funds.** For purposes of clarity, if the costs determined pursuant to section 13.2(c) exceed the Funds remaining in the possession or under the control of the Recipient, the Province shall not provide additional Funds to the Recipient.

## **ARTICLE 14**

### **EVENT OF DEFAULT, CORRECTIVE ACTION AND TERMINATION FOR DEFAULT**

- 14.1 **Events of Default.** Each of the following events shall constitute an Event of Default:
  - (a) in the opinion of the Province, the Recipient breaches any representation, warranty, covenant or other material term of the Agreement, including failing to do any of the following in accordance with the terms and conditions of the Agreement:
    - (i) carry out the Project;
    - (ii) use or spend Funds; and/or
    - (iii) provide, in accordance with section 7.1, Reports or such other reports as may have been requested pursuant to section 7.1(b);
  - (b) the Recipient's operations, or its organizational structure, changes such that it no longer meets one or more of the applicable eligibility requirements of the program under which the Province provides the Funds;
  - (c) the Recipient makes an assignment, proposal, compromise, or arrangement for the benefit of creditors, or is petitioned into bankruptcy, or files for the appointment of a receiver;
  - (d) the Recipient ceases to operate; and
  - (e) an event of Force Majeure that continues for a period of 60 days or more.
- 14.2 **Consequences of Events of Default and Corrective Action.** If an Event of Default occurs, the Province may, at any time, take one or more of the following actions:
  - (a) initiate any action the Province considers necessary in order to facilitate the successful continuation or completion of the Project;
  - (b) provide the Recipient with an opportunity to remedy the Event of Default;
  - (c) suspend the payment of Funds for such period as the Province determines appropriate;

- (d) reduce the amount of the Funds;
- (e) cancel all further instalments of Funds;
- (f) demand the repayment of any Funds remaining in the possession or under the control of the Recipient;
- (g) demand the repayment of an amount equal to any Funds the Recipient used, but did not use in accordance with the Agreement;
- (h) demand the repayment of an amount equal to any Funds the Province provided to the Recipient; and/or
- (i) terminate the Agreement at any time, including immediately, upon giving Notice to the Recipient.

14.3 **Opportunity to Remedy.** If, in accordance with section 14.2(b), the Province provides the Recipient with an opportunity to remedy the Event of Default, the Province shall provide Notice to the Recipient of:

- (a) the particulars of the Event of Default; and
- (b) the Notice Period.

14.4 **Recipient not Remediating.** If the Province has provided the Recipient with an opportunity to remedy the Event of Default pursuant to section 14.2(b), and:

- (a) the Recipient does not remedy the Event of Default within the Notice Period;
- (b) it becomes apparent to the Province that the Recipient cannot completely remedy the Event of Default within the Notice Period; or
- (c) the Recipient is not proceeding to remedy the Event of Default in a way that is satisfactory to the Province,

the Province may extend the Notice Period, or initiate any one or more of the actions provided for in sections 14.2(a), (c), (d), (e), (f), (g), (h) and (i).

14.5 **When Termination Effective.** Termination under this Article shall take effect as set out in the Notice.

## ARTICLE 15 FUNDS AT THE END OF A FUNDING YEAR

15.1 **Funds at the End of a Funding Year.** Without limiting any rights of the Province under Article 14, if the Recipient has not spent all of the Funds allocated for the Funding Year as provided for in the Budget, the Province may:

- (a) demand the return of the unspent Funds; or
- (b) adjust the amount of any further instalments of Funds accordingly.

**ARTICLE 16  
FUNDS UPON EXPIRY**

- 16.1 **Funds Upon Expiry.** The Recipient shall, upon expiry of the Agreement, return to the Province any Funds remaining in its possession or under its control.

**ARTICLE 17  
REPAYMENT**

- 17.1 **Debt Due.** If:

- (a) the Province demands the payment of any Funds or any other money from the Recipient; or
- (b) the Recipient owes any Funds or any other money to the Province, whether or not their return or repayment has been demanded by the Province,

such Funds or other money shall be deemed to be a debt due and owing to the Province by the Recipient, and the Recipient shall pay or return the amount to the Province immediately, unless the Province directs otherwise.

- 17.2 **Interest Rate.** The Province may charge the Recipient interest on any money owing by the Recipient at the then current interest rate charged by the Province of Ontario on accounts receivable.
- 17.3 **Payment of Money to Province.** The Recipient shall pay any money owing to the Province by cheque payable to the "Ontario Minister of Finance" and mailed to the Province at the address provided in section 18.1.

**ARTICLE 18  
NOTICE**

- 18.1 **Notice in Writing and Addressed.** Notice shall be in writing and shall be delivered by email, postage-prepaid mail, personal delivery or fax, and shall be addressed to the Province and the Recipient respectively as set out below, or as either Party later designates to the other by Notice:

**To the Province:**

Ontario Seniors' Secretariat  
777 Bay St., 6<sup>th</sup> fl.  
Toronto ON M7A 2J4

**Attention:** Megan Gariepy,  
Implementation Consultant

Fax: 416-326-7078  
Email:  
[seniorscommunitygrant@ontario.ca](mailto:seniorscommunitygrant@ontario.ca)

**To the Recipient:**

Sister Betty Kennedy Senior  
Centre - Town of Fort Frances  
740 Scott Street  
Fort Frances ON P9A 1H8

**Attention:** Irene Laing  
Secretary

Email: [iwlaing@shaw.ca](mailto:iwlaing@shaw.ca)

18.2 **Notice Given.** Notice shall be deemed to have been received:

- (a) in the case of postage-prepaid mail, seven days after a Party mails the Notice; or
- (b) in the case of email, personal delivery or fax, at the time the other Party receives the Notice.

18.3 **Postal Disruption.** Despite section 18.2(a), in the event of a postal disruption:

- (a) Notice by postage-prepaid mail shall not be deemed to be received; and
- (b) the Party giving Notice shall provide Notice by email, personal delivery or by fax.

## **ARTICLE 19 CONSENT BY PROVINCE**

19.1 **Consent.** The Province may impose any terms and/or conditions on any consent the Province may grant pursuant to the Agreement.

## **ARTICLE 20 SEVERABILITY OF PROVISIONS**

20.1 **Invalidity or Unenforceability of Any Provision.** The invalidity or unenforceability of any provision of the Agreement shall not affect the validity or enforceability of any other provision of the Agreement. Any invalid or unenforceable provision shall be deemed to be severed.

## **ARTICLE 21 WAIVER**

21.1 **Waivers in Writing.** If a Party fails to comply with any term of the Agreement, that Party may only rely on a waiver of the other Party if the other Party has provided a written waiver in accordance with the Notice provisions in Article 18. Any waiver must refer to a specific failure to comply and shall not have the effect of waiving any subsequent failures to comply.

## **ARTICLE 22 INDEPENDENT PARTIES**

22.1 **Parties Independent.** The Recipient acknowledges that it is not an agent, joint venturer, partner or employee of the Province, and the Recipient shall not take any actions that could establish or imply such a relationship.

## **ARTICLE 23 ASSIGNMENT OF AGREEMENT OR FUNDS**

23.1 **No Assignment.** The Recipient shall not assign any part of the Agreement or the Funds without the prior written consent of the Province.



- 23.2 **Agreement to Extend.** All rights and obligations contained in the Agreement shall extend to and be binding on the Parties' respective heirs, executors, administrators, successors and permitted assigns.

## **ARTICLE 24 GOVERNING LAW**

- 24.1 **Governing Law.** The Agreement and the rights, obligations and relations of the Parties shall be governed by and construed in accordance with the laws of the Province of Ontario and the applicable federal laws of Canada. Any actions or proceedings arising in connection with the Agreement shall be conducted in Ontario.

## **ARTICLE 25 FURTHER ASSURANCES**

- 25.1 **Agreement into Effect.** The Recipient shall do or cause to be done all acts or things necessary to implement and carry into effect the terms and conditions of the Agreement to their full extent.

## **ARTICLE 26 CIRCUMSTANCES BEYOND THE CONTROL OF EITHER PARTY**

- 26.1 **Force Majeure Means.** Subject to section 26.3, Force Majeure means an event that:

- (a) is beyond the reasonable control of a Party; and
- (b) makes a Party's performance of its obligations under the Agreement impossible, or so impracticable as reasonably to be considered impossible in the circumstances.

- 26.2 **Force Majeure Includes.** Force Majeure includes:

- (a) infectious diseases, war, riots and civil disorder;
- (b) storm, flood, earthquake and other severely adverse weather conditions;
- (c) lawful act by a public authority; and
- (d) strikes, lockouts and other labour actions,

if such events meet the test set out in section 26.1.

- 26.3 **Force Majeure Shall Not Include.** Force Majeure shall not include:

- (a) any event that is caused by the negligence or intentional action of a Party or such Party's agents or employees; or
- (b) any event that a diligent Party could reasonably have been expected to:

- (i) take into account at the time of the execution of the Agreement;  
and
- (ii) avoid or overcome in the carrying out of its obligations under the Agreement.

26.4 **Failure to Fulfil Obligations.** Subject to section 14.1(e), the failure of either Party to fulfil any of its obligations under the Agreement shall not be considered to be a breach of, or Event of Default under, the Agreement to the extent that such failure to fulfill the obligation arose from an event of Force Majeure, if the Party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the terms and conditions of the Agreement.

## **ARTICLE 27 SURVIVAL**

27.1 **Survival.** The provisions in Article 1, any other applicable definitions, sections 4.6(b), 5.2, 7.1 (to the extent that the Recipient has not provided the Reports or other reports as may be requested by the Province to the satisfaction of the Province), 7.2, 7.3, 7.4, 7.5, 7.6, Articles 8 and 10, sections 12.2, 13.2, 13.3, 14.1, 14.2(d), (e), (f), (g) and (h), Articles 16, 17, 18, 20, 24, 27, 28, 30, 31 and 34, and all applicable cross-referenced provisions and schedules shall continue in full force and effect for a period of seven years from the date of expiry or termination of the Agreement.

## **ARTICLE 28 SCHEDULES**

28.1 **Schedules.** The Agreement includes the following schedules:

- (a) Schedule “A” - Project Description and Timelines;
- (b) Schedule “B” - Budget;
- (c) Schedule “C” - Payment; and
- (d) Schedule “D” - Reports.
- (e) Schedule “E” - Grant Recipient Communications Protocol

## **ARTICLE 29 COUNTERPARTS**

29.1 **Counterparts.** The Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**ARTICLE 30**  
**JOINT AND SEVERAL LIABILITY**

- 30.1 **Joint and Several Liability.** Where the Recipient is comprised of more than one entity, all such entities shall be jointly and severally liable to the Province for the fulfillment of the obligations of the Recipient under the Agreement.

**ARTICLE 31**  
**RIGHTS AND REMEDIES CUMULATIVE**

- 31.1 **Rights and Remedies Cumulative.** The rights and remedies of the Province under the Agreement are cumulative and are in addition to, and not in substitution for, any of its rights and remedies provided by law or in equity.

**ARTICLE 32**  
**BPSAA**

- 32.1 **BPSAA.** For the purposes of clarity, if the Recipient is subject to the BPSAA and there is a conflict between any of the requirements of the Agreement and the requirements of the BPSAA, the BPSAA shall prevail.

**ARTICLE 33**  
**FAILURE TO COMPLY WITH OTHER AGREEMENTS**

- 33.1 **Other Agreements.** If the Recipient:
- (a) has failed to comply (a "Failure") with any term, condition or obligation under any other agreement with Her Majesty the Queen in right of Ontario or a Crown agency;
  - (b) has been provided with notice of such Failure in accordance with the requirements of such other agreement;
  - (c) has, if applicable, failed to rectify such Failure in accordance with the requirements of such other agreement; and
  - (d) such Failure is continuing,

the Province may suspend the payment of Funds for such period as the Province determines appropriate.

**ARTICLE 34**  
**ENTIRE AGREEMENT**

- 34.1 **Entire Agreement.** The Agreement constitutes the entire agreement between the Parties with respect to the subject matter contained in the Agreement and supersedes all prior oral or written representations and agreements.
- 34.2 **Modification of Agreement.** The Agreement may only be amended by a written agreement duly executed by the Parties.

The Parties have executed the Agreement on the dates set out below.

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO**  
**as represented by the Minister Responsible for Seniors Affairs**

\_\_\_\_\_  
Name: Abby Katz Starr  
Title: Director  
Ontario Seniors' Secretariat

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name: Irene Laing  
Title: Secretary

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
Date

I/We have authority to bind the Recipient.

## **SCHEDULE "A"**

### **PROJECT DESCRIPTION AND TIMELINES**

#### **Background**

The Sister Betty Kennedy Senior Centre was established 31 years ago by the Town of Fort Frances in order to meet the social and recreational needs of area seniors. Over the years the Centre has successfully offered a number of programs including workshops on elder abuse, computer training and defibrillator training. The Centre has also been actively involved in the Ontario Senior Games and has been the venue for the Games in the district for the last 31 years on an alternating basis with Kenora and Dryden.

#### **Project Objective**

As a result of the loss of the major employer in Fort Frances and the subsequent relocation of many younger families, the town has become an "older" community. Many of the senior residents require services from the various agencies which serve the community; however, they are not aware of how to go about finding the services they need.

The **Fort Frances Seniors Community Resource and Educational Awareness** project will create a comprehensive directory of the health and wellness services available to seniors in the area. The directory will identify a broad range of services available through agencies and local businesses. It will indicate where and how to obtain these services as well as any costs which may be incurred. To compile the directory researchers will interview agency personnel, collect brochures and contact various businesses which provide special services to seniors. The information will then be collated and printed in a directory which will be widely available. The completed directory will be presented at a Seniors Fair to be held at the Sister Betty Kennedy Senior Centre in Fort Frances.

The Fair will include workshops which focus on senior issues relative to health, safety and public resources. Some of the presentations will be on:

- Seniors and medication
- Nutrition for seniors
- Seniors and mental health
- Wills, estate planning and power of attorney

#### **Scope of Project**

- Five hundred directories will be produced and distributed.
- It is anticipated that 120 seniors, primarily females over the age of 65, will attend the fair and that many others will benefit from the information presented in the directory.
- The project will benefit older women as well as the aboriginal seniors in the area.
- The Fair will provide an opportunity for seniors, especially females who do not drive to socialize as well as learn from the workshops.
- Both the Fair and directory will be in English only.

#### **Timelines**

**June 30, 2015 - September 18, 2015**

## SCHEDULE "B"

### BUDGET

Budget	Anticipated Costs \$
Speaker Honorariums - 4 @ \$100/speaker	\$400.00
Van Rentals - 2 @ \$128/van	\$256.00
Drivers -2 @ \$100/driver	\$200.00
Advertising	\$1,600.00
Coffee Breaks – 2 breaks for 120 people	\$960.00
Lunch - 120 people @ \$11.25/person	\$1,350.00
Research and typing - 120 hours @\$15/hour	\$1,700.00
Mileage for Research -500km @ \$0.41/km	\$205.00
Printing of Director - 500 copies @ \$5.00/copy	\$2,500.00
Pamphlet Rack	\$200.00
<b>Total Project Costs</b>	<b>\$9,371.00</b>

#### **Less Contributions (Stream 2 only):**

Note: The total amount requested should represent no more than 80% of total project cost. You are required to have 20% of project costs provided through cash and/or in-kind contributions.

Cash Contribution.....	\$
In-kind Contributions .....	\$1,874.20
Other Contributions (specify below) ▼	

<b>Funding Requested</b> (Total Project Costs - Contributions, if applicable)	<b>\$7,496.80</b>
---	-------------------

**SCHEDULE "C"**

**PAYMENT**

<b>PAYMENT DATE OR MILESTONE</b>	<b>AMOUNT</b>
<b>Initial Project Payment</b>	<b>\$5,997.44</b>
<b>Payment upon receipt of a satisfactory Project Final Report, no later than March 31, 2016</b>	<b>\$1,499.36</b>

## SCHEDULE "D"

### REPORTS

Name of Report	Due Date
1. Project Final Report	Within 30 days of project completion

#### ***Report Details***

Each Report will include the following items:

- (a) a update on the status and progress of the Project;
- (b) an indication of whether the objectives of the Project are being / were met;
- (c) a description of how the success of the Project is being / was measured;
- (d) a description of the level of community participation and response;
- (e) details of how the Province's support has been acknowledged;
- (f) an unaudited statement which accounts for Project revenue and expenditures;
- (g) in the case of the final report, an audited financial statement which accounts for Project revenue and expenditures, if audited statements are normally prepared by the Recipient; otherwise, a review engagement report which accounts for Project revenue and expenditures prepared by an accredited accountant external to the Recipient; and
- (h) any other details that may be requested by the Province.



**SCHEDULE “E”**  
**Seniors Community Grant 2015**  
**Grant Recipient Communications Protocol**

**Media and Promotion**

- As part of the effort to build awareness of programs for seniors, the Government of Ontario may hold a media announcement.
- As a grant recipient, please notify the Ontario Seniors’ Secretariat if you plan to hold a media/launch event or public announcement. Please provide a minimum of seven business days-notice of the date and confirmed location of the event and as much additional detail as possible (i.e. anticipated attendance, invited dignitaries, etc.) to [seniorscommunitygrant@ontario.ca](mailto:seniorscommunitygrant@ontario.ca).
- All media and promotional/public materials must acknowledge funding from the Government of Ontario.
- You may wish to consider involving local MPPs or other officials in your event or activity.

**Marketing**

- All marketing materials must acknowledge the support of the Government of Ontario.
- This means that all materials (i.e. brochures, reports, advertising, oral presentations and publicity relating to the projects) credit the support of the Government of Ontario by following the Government’s attached guidelines specifically related to the use of the Ontario logo as well as the use of mandatory wording “Funded by”. The logo should only be used on products directly related to the Seniors Community Grant.
- Please also share your marketing or promotional materials with us in advance for our information only.

We are happy to work with you to determine how this protocol will impact your communications outreach. If you have any questions, please contact the Ontario Seniors Secretariat at [seniorscommunitygrant@ontario.ca](mailto:seniorscommunitygrant@ontario.ca).

Mr. Mayor, Fellow Councillors, Staff, Media and Town Citizens, it is a pleasure to report to you this evening on the activities of the Community Services Division of the 6 months from January to June of 2015. The Community Services Division has 10 physical locations under its purview and various other programs, services, and committees to administer.

### **Museum**

#### **Visitors**

January to May 2015: 1270 (as opposed to 1393 in 2014). Numbers were higher than normal when we first opened the World Wars exhibit in the fall, but have declined through 2015. Although there is some benefit in running fewer exhibits, we run the risk of having the public lose interest if the exhibit is up too long.

#### **Exhibits**

- Sept - Apr: WWI & WWII personal stories of those who served.
- Apr - May: Local hockey history.
- May – Aug: 50<sup>th</sup> Anniversary of Noden Causeway. Public reception Wed June 24<sup>th</sup>.

#### **Miscellaneous**

- Many school groups visit at this time of year. Students have incorporated some new programming that better reflect heritage. For example: using plants to imprint on fabric.
- Sherry attended Regional Museums Meeting in Atikokan, and was intrigued by Kenora and Sioux Lookout's introduction of I-pads into their exhibits, allowing for the use of video clips and dialogue to give additional information to interested visitors.
- A one-year intern position has been approved through the Northern Ontario Heritage Fund Corporation. Interviews will take place prior to the end of June, with hiring to follow in July.
- Serving tea & scones on Market Thursdays starting June 18.

### **Fort Frances Children's Complex**

In January the Ontario Government announced a Wage Enhancement for eligible Day Care centres, we are optimistically moving forward with the application for qualifying staff.

Our new cook is doing well in her position and the children are enjoying a multitude of delicious and nutritious meals.

Day Care staff have been very fortunate to attend many training opportunities so far in 2015, the most beneficial of which has been the "How Does Learning Happen?" Pedagogy. It was a wonderful occasion for the program staff to receive valuable

instruction as well as network with other program staff in the Kenora/Rainy River District.

We had a very successful Licensing inspection with our Program Advisor commenting specifically on how the teachers are really embracing 'Emergent Curriculum' and necessary documentation. She also noted that the teachers and children were continually engaged in a variety of positive interactions.

The Day Care enrolment continues to do well, we have been maintaining approximately 84% capacity as we enter the summer season with 3 Full Programs and enrolment growing in the other 2 programs.

The Best Start Hub has been truly fortunate to once again partner with St. Michael's School as well as the Sports Centre to offer outreach programming in our community.

The Health Unit also played a great role in our programs by offering 'Make the connections' (an attachment based program for caregiver and babies under 1 year of age) and prenatal classes in our main Hub. Our program attendance has been doing quite well with many new and returning patrons. As the Hub enters the summer we're excited to boast programming with community partners at the Library, Friendship Centre and Sports Centre Rec'n Crew to offer a wide variety of child & caregiver interactive programs.

The **Fort Frances Public Library** received a very generous donation from the Estate of Jack Gagne and the Estate of Dino D'Agostini. Both men were avid readers and Library users, who continued to use the library later in life through the Home Delivery program. Both donations are not intended to be used for operating expenses, as the result the funds were invested and will be used as required in consultation with the Estate Trustees.

One of the projects to be funded with the Gagne donation is the Library's Maker Space, a new collaborative and innovative space for the community to come together to discover, explore, and create. The space will include the latest technologies such as 3D printing, and be open and accessible to all.

The funds received from Mr. D'Agostini's estate will continue to support the projects that he was passionate about, namely the Forest of Reading Program and our collections. This program continues to foster a love of literacy and reading for children and families.

We have seen an increase in the use of Library Services. Our Tech Boot Camp program and free computer service continue to be popular. Our "Let's Speak Ojibwe" and "French Storytime" Programs have proven to be a great success. These programs build community by bringing together members to learn in a comfortable setting. In April 2015 we launched our Seed Library, a free accessible community seed resource. Once registered, members can check out seeds and grow them over the summer, then donate back to the Seed Library to ensure sustainability for the following year.

Our Home Delivery Program is growing to meet the needs of the community. Our dedicated volunteers, help select and then deliver material to members in the community. Last year the Library delivered 11,541 items to home-bound members in our community.

The Fort Frances Public Library Technology Centre is a community hub, which will continue to grow and flourish.

The **Sister Kennedy Centre**, under the direction of a new Board have experienced a successful Spring with several Seniors frequenting the Centre on a weekly basis for programming, coffee, and fitness classes. The SKC was also the beneficiary of a Seniors Community Grant as applied through an ad-hoc committee to produce a comprehensive Community Seniors Guide to assist retirees with all senior related services & activities in the district.

Along with a busy end to the hockey & skating season this Spring the **Memorial Sports Centre** has taken a huge technological step forward by upgrading the booking and membership software to a web-based version called ActiveNet. The new software will perform a greater service to the community by enabling convenient online transactions for patrons. The Sports Centre is about to engage in the popular summer programs for young students with encouraging enrolment again this year. Fitness continues to be at the forefront for many people in Fort Frances with over 400 regular active participants in the fitness & pool area. The MSC is poised to begin an eventful fall and winter schedule of activity on the rinks and residents may also appreciate the annual coat of paint through most of the facility and an upgraded kitchen in the auditorium.

The **Sorting Gap Marina** had the benefit of a capital component for new flooring this Spring that has certainly spruced up the appearance for a busy summer with many regulars stopping by for ice cream and refreshments. The Marina will also play host to the Dragon Boat Festival and the Fort Frances Canadian Bass Championship again this year.

**Kiwanis Sunny Cove Camp** is relishing Town capital funding and Moffat grant funding for the 2nd year that will greatly improve the camp infrastructure for the enjoyment of our 6 weeks of youth camps and numerous other functions being hosted.

The **East End Hall** now features new main floor accessibility bathrooms and an outdoor wheelchair ramp as funded by the federal, 'Enabling Accessibility Grant' that has again made it a terrific facility for residents who require a smaller venue to host an event.

The **Community Services Division** has experienced a demanding and successful first half to 2015 and would like to extend our genuine gratitude to all our guests and residents who encourage us daily to deliver the best service possible to our fantastic community.

## REPORT

**TO:** Mayor Avis & Council

**FROM:** Jason Kabel, Manager of Community Services

**DATE:** Thursday July, 2, 2015

**RE:** Memorial Sports Centre Canteen Agreement

---

### BACKGROUND

In the Spring of 2012 the Community Services Division undertook a competitive Request for Proposals (RFP) process to select a concessionaire for the Memorial Sports Centre canteens. Mark Nagant was the successful proprietor selected by the committee of the five submissions and interviews. The contract was for two winter seasons ending June 30, 2014. It was agreed by the Community Services Division to extend the contract for an additional year, to June 30, 2015 with the same conditions in the agreement.

The Community Services Division has sought to make a couple of modifications to the existing contract for consideration with the intent to enter into another agreement with Mark Nagant to June 30, 2016. The items proposed for revision are as follows:

	<b>Previous Contract</b>	<b>Proposed Contract</b>
Operating Hours	Weekdays 03:30 p.m. to 10:00 p.m. Weekends 08:00 a.m. to 8:00 p.m.	Weekdays 03:30 p.m. to 10:00 p.m. Weekends 08:00 a.m. to 10:00 p.m.
Vending Machines	Revenue & responsibility of the concessionaire	Revenue & responsibility of MSC staff

It is suggested that all other components of the past agreement remain without amendment, including compensation to Memorial Sports Centre from the concessionaire for the privilege of operating the concession service within the facility, which is 12% of gross sales generated.

### RECOMMENDATION

The Community Services Executive Committee recommends to Mayor & Council to enter into an agreement with Mark Nagant for the purposes of providing canteen services in the Memorial Sports Centre from September 1, 2015 to June 30, 2016 as attached.

Respectfully Submitted,

Jason Kabel,  
Manager of Community Services

**Council approval of this report will** agree with the Community Services Executive Committee to enter into an agreement with Mark Nagant for the purposes of providing canteen services in the Memorial Sports Centre from September 1, 2015 to June 30, 2016 as attached.

THIS AGREEMENT made this **1st** day of **September, 2015**.  
B E T W E E N :

**THE CORPORATION OF THE TOWN OF FORT FRANCES**

hereinafter called the "Town", OF THE FIRST PART.

- A N D -

**MARK NAGANT**

hereinafter called the "Concessionaire", OF THE SECOND PART.

WHEREAS the Town is the owner of the Memorial Sports Centre situated within the Town of Fort Frances;

AND WHEREAS the Concessionaire is desirous of contracting with the Town for the operation of Concessions situated within this facility;

NOW THEREFORE, in consideration of the covenants and promises herein contained, the parties hereby agree as follows:

**1. DEFINITIONS**

In all documents forming part of this Contract, unless the context requires otherwise:

"Town Equipment" means the equipment supplied to the Concessionaire on an "as is" basis and owned by the Town as described in Schedule "A".

"Facility" means the buildings within which the concession areas (as are described in the Agreement) are located, includes the entire Memorial Sports Centre

"Gross Sales" means, when used in relation to any period of time, the entire amount charged by the Concessionaire on all concession sales of merchandise, foods, beverages, services and any other products or services whatsoever which are provided under this Contract during any such period of time whether or not such sales are made on a cash basis or on credit, paid or unpaid, collected or uncollected, including deposits not refunded to customers, but gross sales shall not include, to the extend that the Concessionaire has included them therein:

any sales or excise tax imposed by any government authority and added to the price of a sale or service or absorbed therein and collectable from the customer

the amount of money recovered on any return of goods to suppliers of the Concessionaire; and

the amount of any credit or refund for any merchandise returned or exchanged or any allowance made for loss of or damage to merchandise sold.

**2. THE CONCESSION**

The Town hereby grants to the Concessionaire the exclusive rights to sell at the Concessionaire's sole expense, food, beverages, services and miscellaneous products (subject always to the approval of the Town), in the concession areas more particularly detailed in section four (4) hereinafter set out. The Concessionaire agrees to operate the concessions and to sell the said food, beverages, services and miscellaneous products during the term of this Agreement in a good and professional like manner subject always to all terms of the Agreement.

3. EXCEPTED SALES AND SPECIAL EVENTS

Although the Concessionaire has the authority to sell the products (in the discretion of the Town) that are herein provided in the concession locations specified in section four (4), the Concessionaire acknowledges and agrees as follows:

Circus - The Town has historical arrangements with the Shriners that allow them to sell candy floss, peanuts, plus novelty, and souvenir items at NO CHARGE.

The Concessionaire must agree and adhere to this stipulation under this contract and any subsequent extensions to other specialty groups.

Socials and Weddings - we rent the Auditorium to community members for socials, youth dances, weddings, beer gardens, and banquets where they can provide their own food and beverage or contract to a caterer. Therefore it is agreed that the Concessionaire would have the option to provide these services but not otherwise limit or inhibit past practice.

Festivals and Trade Shows – the Town rents the arenas for a variety of events when the ice is out, such as Pow-Wows, Employee Appreciation Days, Trade Shows, et cetera where the renter provides food and beverage as part of the activities. This agreement will not limit the renters ability to provide their activities and the concessionaire will be able to provide services at the renters request.

4. CONCESSION AREAS

The said concession areas in addition to being detailed below are more particularly outlined on the plans annexed hereto as Schedule "B":

i) Memorial Sports Centre: Main Foyer contains approximately 64 square meters of concession's space inclusive of receiving and storage area. The mezzanine contains approximately 64 square meters of concession area inclusive of storage area.

5. PAYMENT FOR PRIVILEGES

In consideration of the granting of the Concession rights, the Concessionaire shall pay to the Town 12% of total gross sales and 12% when there is a Junior Hockey program of the total monthly gross sales herein this Agreement sometimes referred to as percentage charges. These charges shall be payable on the fifteenth (15) day after the end of each and every month throughout the term of the agreement.

In the event that this Agreement or the concession privileges hereby granted are terminated prior to the end of the term hereof, the payment to the Town shall be apportioned to the date of termination and paid forthwith by the Concessionaire to the Town, all without prejudice to any other claims entitlement of the Town.

6. RECEIPTS FROM CONCESSION OPERATION

Subject to the Town's right to have access to all financial information on the Concessionaire in the Facilities, the Concessionaire shall be entitled to retain all receipts derived from the Concession for its own use absolutely.

The Concessionaire shall not alter, add to or in any way vary any Concession or Town property without first obtaining the consent in writing of the Town.

7. ALTERATIONS AND ADDITIONS

The Concessionaire shall not alter, add to or in any way vary any Concession or Town property without first obtaining the consent in writing of the Town.



8. REPORT OF ACCIDENTS:

The Concessionaire shall give to the Town immediate notice of any accident arising out of the operation of any Concession and or of any damage or injury to any other part of the Recreational and Sport facilities.

9. TERM

This Agreement shall be for a term of one year commencing on the 1st Day of September 2015 and terminating on the 30<sup>th</sup> day of June 2016.

10. EQUIPMENT AND FACILITIES

The Town equipment shall be maintained and repaired by the Town.

In those circumstances where damage was a direct result of neglect by the concessionaire, any of its employees or agents, the concessionaire shall be solely responsible for repairs.

The Concessionaire shall be responsible for any additional or new equipment necessary for the efficient operation of the concessions.

The Concessionaire will maintain the premises and fittings in a clean and wholesome condition at all times that he will not allow refuse or other objectionable material to accumulate on or around the premises and will keep the premises in a clean and tidy condition at all times.

11. COMPLIANCE WITH REGULATIONS

The Concessionaire agrees to comply with all laws and regulations, Federal, Provincial and Municipal, and all Municipal bylaw and regulations pertaining to the storage and serving of goods and refreshments, to the employment of labour or the operation of the concession and will at its own expense obtain and pay for all required licenses or permits.

12. COVENANT TO OPERATE

The Concessionaire shall provide its concession services in the concession areas at Memorial Sports Centre during the operating hours and seasons hereinafter set out, the Concessionaire may extend the hours, if business dictates.

i. OPERATING HOURS

Weekdays 03:30 p.m. to 10:00 p.m. and weekends 08:00 a.m. to 10:00 p.m. These hours are subject to change in order to meet the program needs of the Sports Centre upon agreement by both parties.

ii. CLOSING OF FACILITIES

The Town at all times reserves the right to close the Facilities or part of them as in the Town's absolute discretion it considers advisable so that they will not be open during all of the mandatory hours of operation or during the full seasons hereinbefore set out. Without limiting the generality of the foregoing, the Town has the right to close the Facilities during inclement weather or for repairs and in cases of an emergency or in the event that a season is shortened because of a lack of interest in the use of the facility. In such event then the operating hours and the days in the season for which the facilities are not opened shall be correspondingly reduced.

13. VENDING MACHINES

The Memorial Sports Centre staff will assume the responsibility of the vending machines and they will not be subject to revenue for the concessionaire in any way. The concessionaire hereby relinquishes any right or privilege to the revenue generated by the vending machines and will not otherwise inhibit the ability for such to generate revenue for the facility.

#### 14. OCCUPANCY OF PREMISES

Notwithstanding anything herein contained, the Concessionaire is not and shall not be a tenant of the Town and is not and shall not be entitled to exclusive possession or occupancy of any part of the Facilities or concession areas. The use of the Facilities is limited to their use in order to provide the services under this Contract by the Concessionaire, to the extent necessary to do so and only to that extent. The Town and its authorized personnel shall have access to all parts of the Facilities including the concession areas without any prior notice for any and all purposes, including without limitation Public Health and Fire Inspections, provided that the Town shall use reasonable best efforts not to interfere with the performance of services hereunder.

#### 15. TERMINATION

Notwithstanding the foregoing:

- i) Either party to this Agreement shall have the right to terminate this Contract upon giving sixty (60) days written notice to the other and neither of the party in the event of exercising its right of early termination shall have to provide any reason whatsoever for terminating the Contract; and
- ii) if the Concessionaire is in default hereunder, the Town shall have the right to immediately terminate this Contract by the delivery of written notice to the Concessionaire, in which case this contract shall be at an end and the parties shall have no further obligations, one to another, save and except;
- iii) the Concessionaire shall be responsible for any obligations incurred in this agreement or breaches of this agreement up to date of termination.
- iv) the Concessionaire will be obligated to continue to account and provide all information and payments under this Agreement with respect to any net profit made or transacted before the termination hereof;
- v) the right of the Town to any and all financial and sales information for the period up to termination will survive the termination of this Agreement;

#### 16. DEFAULT

For the purpose of this section, the Concessionaire will be deemed to have defaulted under the terms of this Contract upon the occurrence of the following:

- i) the Concessionaire breaches any of the terms or conditions of this contract.
- ii) the Concessionaire violates any law or commits any act or becomes involved in any situation or occurrence which, in the opinion of the Town or Community Services Manager, would tend to bring the Town into public disrepute.

#### 17. VERBAL AND OTHER ARRANGEMENTS

This Contract may not be amended, modified or in any way changed except by a written document of equal formality herewith.

#### 18. DAMAGE TO PROPERTY OF THE TOWN

In carrying out the operation from its inception and until the conclusion of the same, the Concessionaire shall make good any damage, due to neglect, caused to property of the Town at its own expense.

## 19. DAMAGES AND INDEMNITY

The Concessionaire shall be responsible for any and all claims, demands, damages, law suits, other proceedings, causes of action, liabilities, claims for lien, civil and criminal penalties and charges, costs and other expenses including reasonable legal fees done or caused by it, its employees or patrons, or resulting from the prosecution of the operation or caused by reason of the existence or location or condition of the premises or of any equipment used therein, or which may happen by reason thereof, or any and all claims, demands, damages, law suits, other proceedings, causes of action, liabilities, claims for lien, civil and criminal penalties and charges, costs and other expenses including reasonable legal fees whatsoever which may arise as a result of the operations of the Concessionaire, the Concessionaire's servants, agents or employees, or arising or related to the use or the occupation of the concession areas and Facilities or the exercise of any privileges herein granted or arising from any failure, neglect or omission on their part, or on the part of any of their employees, to do or perform any or all of the several acts or things required to be done by them under and by these conditions, and covenants and agrees to hold the Corporation harmless and indemnified for all such claims, demands, damages, lawsuits, other proceedings, causes of action, liabilities, claims for lien, civil and criminal penalties and charges, costs and other expenses including reasonable legal fees; and in case of the Concessionaire's failure, neglect or omission to observe and perform faithfully and strictly, all the provisions of these Conditions, the Town may either with or without notice (except where in these Conditions notice is specially provided for, and then upon giving the notice therein provided for), take such steps, procure such materials and workers, do such work or things as deemed advisable toward carrying out and enforcing the same, and any and all expenses so incurred may be deducted or collected by the Town from the Concessionaire, and any such action by the Town as herein empowered to take, shall not in any way relieve the Concessionaire from any liability under this Contract.

## 20. CONCESSIONAIRE'S EQUIPMENT

Equipment and property of the Concessionaire are not protected against fire, theft, vandalism or other risks by the Town, and the protection of such, (and any damage caused too such), is the sole and complete responsibility of the Concessionaire.

## 21. CONCESSIONAIRES' REPORTS AND AUDITS

- i) The Concessionaire shall submit to the Town on or before the 15th day following the end of each calendar month and partial calendar month during the term of this agreement, written statements signed by the Concessionaire certified to be true and correct showing the amount of gross sales for the preceding month or partial calendar month, together with the payment to the Town of the appropriate percentage charges set out in section five (5) hereof.
- ii) For the purpose of ascertaining the amount payable under section five (5) and for permitting verification by the Town, the Concessionaire shall keep at the Facilities or at its office, for a period of not less than 3 years following the end of each calendar year or a part thereof within the term of this Contract adequate books and records including but not limited to records of inventories, purchases and receipts of merchandise and all sales and other transactions by the Concessionaire.
- iii) In addition to any other right of the Town, the Town, its employees and authorized representatives may require an audit of the books and records of the sales and expenses of the Concessionaire and all persons conducting business on or from the premises necessary to verify "Gross Sales". The report on the audit made by the Town's auditor will be final and binding upon the Concessionaire and the Town upon all questions relating to financial matters or compensation. Acceptance by the Town of any payments under this Contract is without prejudice to the Town's right to an audit of the books and records of the Concessionaire.

## 22. WORKPLACE SAFETY AND INSURANCE BOARD (ONTARIO)

Forthwith upon the execution of this Contract, the Concessionaire shall deliver to the Town, certificates of good standing from the Workplace Safety and Insurance Board of Ontario, with respect to all the employees of the Concessionaire and shall provide such additional certificates as often as is

deemed necessary by the Town during the term, but in any event shall provide such a certificate at least annually on the anniversary date of the commencement of the term. The Concessionaire shall be responsible, at its expense, for the charges, assessments or other payments required to be paid to the WSIB with respect to the Concessionaire's employees. The Concessionaire shall pay to the Workplace Safety and Insurance Board of Ontario all assessments and levies owing to the Board in respect to this contract and any unpaid assessments or levies shall be the sole responsibility of the Concessionaire.

23. OCCUPATIONAL HEALTH AND SAFETY ACT

The Concessionaire shall be solely responsible for safety and for compliance with the Occupational Health and Safety Act and Regulations and the Concessionaire shall, at its sole cost and expense, ensure that all contractors, agents, servants and employees comply with the Act and Regulations and the Concessionaire shall indemnify the Town against any contravention thereof whatsoever.

24. TAXES

The Concessionaire shall be solely responsible for the payment of all taxes and necessary permits of any kind whatsoever including, but not limited to, income, sales, business, employer health and all other applicable taxes which may be assessed or levied against the Concessionaire or which may relate to the Concessionaire, its operations. The Concessionaire shall reimburse, indemnify and save harmless the Town of and from any liability for all such taxes.

25. UTILITIES

The Town shall provide all heat, electrical power, fuel, refrigeration, ventilation and air conditioning (where installed), and utility services reasonably required for the efficient provision of services under this contract.

26. GLASS OR CROCKERY

In the Arena Facilities the Concessionaire shall not use glass or crockery or bottles for the service of food, tea, coffee, milk or beverages, but shall use paper or plastic containers for this service.

27. CONCESSION SEATING AREA

During specified hours of operation, the concessionaire is responsible for cleaning and housekeeping of the concession seating area in the lobby of the Arena and shall keep all tables clean and remove used dishes and refuse there from.

28. ITEMS FOR SALE

For the purpose of providing Food Service, the Concessionaire agrees to vend commonly accepted fast food items, snacks and abide by the contractual requirements between the Town and Pepsi Cola Limited. The Town will provide at their cost to the concessionaire all the necessary products from Pepsi for resale. The sale of sunflower seeds and peanuts in the shell is not permitted.

29. PRICES TO BE DISPLAYED

Prices must be displayed in prominent places, in order that the patrons may be kept informed of such prices. Menu display is provided at each of the concession areas in the facility.

30. ALCOHOL

The Concessionaire and its employees, agents and representatives, shall not offer for sale, sell, serve, store, consume or permit to be consumed, any liquor or alcohol products in the concession areas and Facilities. Such rights are reserved to the Town in the Facilities and the Concessionaire acknowledges that the Town may carry on liquor and alcohol sales as aforesaid. As well, the Town may permit any other groups, clubs, persons to sell liquor or alcohol products in its facilities as the Town in its absolute

discretion deems advisable. The Concessionaire specifically acknowledges the Town's exclusive rights in this regard.

31. SECURITY

The Concessionaire shall be responsible for his/her own cash control and handling procedures, including insuring that cash is picked up on a daily basis.

32. INSURANCE

The Concessionaire shall provide and maintain during the term of the Contract Comprehensive General Liability insurance acceptable to the Corporation of the Town of Fort Frances and subject to limits of not less than \$2,000,000.00 inclusive per occurrence for bodily injury, death and damage to property including loss of use thereof.

33. NO ASSIGNMENTS

Neither this Contract and the rights granted to the Concessionaire hereunder nor any part thereof are assignable by the Concessionaire without the prior written approval of the Town to such assignment, which approval may be withheld without reason by the Town.

34. MUNCIPAL FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

i) All of the records and documents of the Concessionaire referred to and cited in this Agreement where such records and documents have been created in order to comply with the terms, provisions, requirements and obligations of the Concessionaire as set out in this agreement are "records" of the Town as "records" are defined in the Municipal Freedom of Information and Protection of Privacy Act.

ii) The records and documents referred to in the paragraph above are, for the purposes of this Agreement, in the joint care and custody of the Concessionaire and of the Town; and

iii) The Concessionaire hereby agrees with the Town that the records and documents referred to in the first paragraph above will be managed and administered in accordance with the requirements of the Municipal Freedom of Information and Protection of Privacy Act.

35. NOTICE

To the Concessionaire by mailing the notice to:  
Mark Nagant  
1025 Cornwall Avenue North,  
Fort Frances, ON P9A 3G7

To the Town by mailing the notice to:  
The Corporation of the Town of Fort Frances  
320 Portage Avenue,  
Fort Frances, ON P9A 3M3

Attention: Lisa Slomke, Clerk

or to such other address as each party may advise the other by notice in writing. Notice given in this manner shall be deemed to have been given and effective as of the fifth day following the date of mailing.

IN WITNESS WHEREOF the Town hereto has affixed its Corporate Seal and attested by its proper Officers duly authorized on their behalf and has hereunto set

SIGNED SEALED  
AND DELIVERED

) THE CORPORATION OF THE TOWN  
) OF FORT FRANCES

MAYOR:\_\_\_\_\_

CLERK: \_\_\_\_\_

Per: \_\_\_\_\_ Printed:\_\_\_\_\_

Per: \_\_\_\_\_ Printed:\_\_\_\_\_

Witness:\_\_\_\_\_ Printed:\_\_\_\_\_

SCHEDULE "A" Town Owned Canteen Equipment

One Quest gas grill and oven combination

One Quest two basket deep fryer

One popcorn machine

Four deep freeze chests

Two Bunn coffee machines with glass pots

One Gaggia Espresso/ Cappuccino coffee machine

One hot chocolate dispenser

One microwave oven

Two coffee percolators

One kettle

Various pots, utensils, can opener, etc.

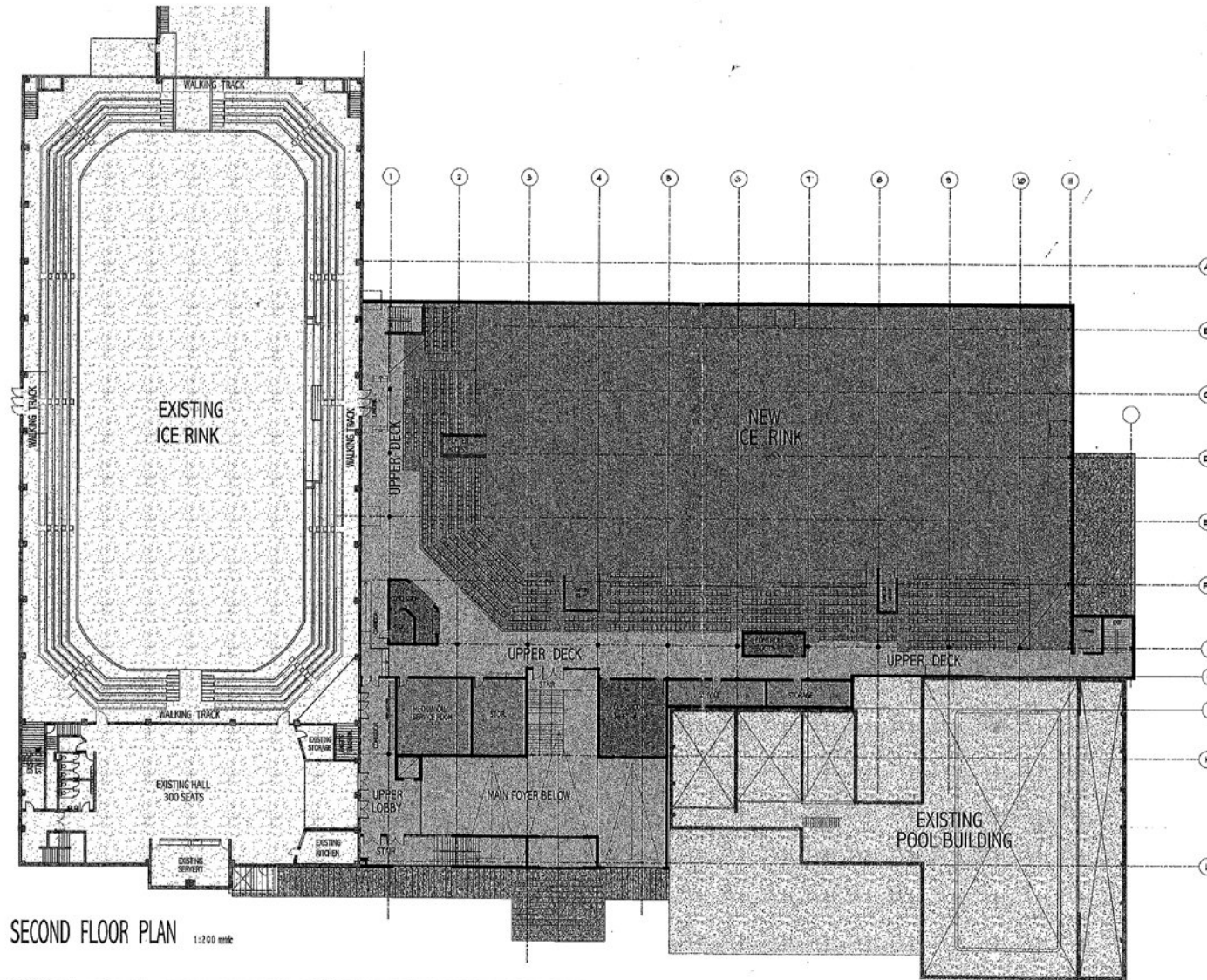
Display racks

2 Pepsi Display Coolers

SCHEDULE "B" Concession Areas – Two drawings attached







SECOND FLOOR PLAN 1:200 mm



# INDOOR ICE FACILITY FOR THE TOWN OF FORT FRANCES

**KUCH STEPHENSON**  
ARCHITECTS  
131 Court Street North, Thunder Bay, Ontario  
P7A 6V1 ph. 807 345 5382 fx. 345 4095  
info@kuchstephenson.com www.kuchstephenson.com  
skkuchstephenson.com PROJECT 10847



**P3**