

**THE CORPORATION OF THE TOWN OF RAINY RIVER**

**BY-LAW 1823-22**

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Being a By-law to Authorize the Execution of a Land Exchange Agreement with  
Rainy River District School Board

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**WHEREAS** it is in the interests of the Corporation to enter into an Agreement with Rainy River District School Board for the exchange of lands as described hereinafter and the lands to be sold by the Corporation thereunder have been declared by Resolution to be surplus to the requirements of the Corporation.

**AND WHEREAS** Section 23 of the *Municipal Act* authorizes a municipality to delegate its powers and duties under the said Act or any other Act to a person or body, as provided in the said Section;

**NOW THEREFORE THE CORPORATION OF THE TOWN OF RAINY RIVER ENACTS AS FOLLOWS;**

1. Notwithstanding any other By-law or Policy of the Corporation, The Corporation of the Town of Rainy River is hereby authorized to enter into a Land Exchange Agreement ("the Agreement") with Rainy River District School Board substantially in the form of Schedule "A" to this By-law.
2. The Chief Administrative Officer/Clerk-Treasurer is authorized to sign the Agreement on behalf of the Corporation and to affix the seal of the Corporation thereto.
3. The Chief Administrative Officer/Clerk-Treasurer is authorized to agree to such changes to the form and content of the said Agreement as she considers necessary or expedient and is authorized to execute such further documents and take such action as she deems appropriate in her discretion to carry out the said Agreement and amendments thereto.
4. Notwithstanding any other provision of this By-law, in the event that the Chief Administrative Officer/Clerk-Treasurer deems it not in the interests of the Township or the community to proceed with the transaction referred to herein, she is authorized to decline to execute the Agreement and bring the matter forth to Council following the lame duck period for further consideration.

THIS BY-LAW SHALL COME INTO FORCE AND TAKE EFFECT IMMEDIATELY UPON THE PASSAGE THEREOF.

READ and passed in open Council this 18<sup>th</sup> day of August 2022

Deputy Mayor

Chief Administrative Officer/  
Clerk-Treasurer

## LAND EXCHANGE AGREEMENT

**THIS LAND EXCHANGE AGREEMENT** (hereinafter referred to as the "Agreement") made as of the \_\_\_\_ day of \_\_\_\_\_, 2022.

### BETWEEN

**Rainy River District School Board**, established pursuant to the *Education Act*, R.S.O. 1990, c. E.2 (hereinafter referred to as the "Board").

### AND

**The Corporation of the Town of Rainy River**, an Ontario municipal corporation established pursuant to the *Municipal Act*, 2001, S.O. 2001, c. 25 (hereinafter referred to as the "Town")

**WHEREAS** the Board is the owner of certain lands which are described in Schedule "A" to this Agreement (referred to as the "Board's Land");

**AND WHEREAS** the Town is the owner of certain lands which are described in Schedule "B" to this Agreement (referred to as "Town's Land");

**AND WHEREAS** the Board wishes to acquire title to the Town's Land, as described in Schedule "B" of the Agreement, and the Town wishes to acquire title to the Board's Lands, as described in Schedule "A" of the Agreement;

**AND WHEREAS** in furtherance of the Agreement to exchange lands, the Board and the Town have agreed to enter into this Agreement;

**AND WHEREAS** the Board and Town both acknowledge that this Agreement may be ineffective if the Minister of Education does not approve the land exchange set out in this Agreement.

**IN CONSIDERATION** of the premises and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties hereby covenant and agree as follows:

## **1. Interpretation**

### **1.1. Definitions**

In this agreement:

- (1) "As Is" means, with respect to the Board's Land and the Town's Land, that the Vendor, as defined herein, does not make any representation or warranty as to the state of the land, including, without limitation, suitability for development, the existence of any defect or the presence of any substances or the past or present carrying on of any activities which in any manner have not or presently do not or, on or after the Closing Date, will not meet the requirements of applicable environmental laws;
- (2) "Business Day" means any day which is not a Saturday, Sunday or statutory holiday in the Province of Ontario;
- (3) "Closing Date" means
  - (i) in relation to the transfer of the Board's Land to the Town the date when the new school to be constructed on the Town Land is ready for occupancy,
  - (ii) in relation to the transfer of the Town Land to the Board the 11<sup>th</sup> day of August 2022 or such other date as the Solicitors for the Board and the Town may agree;
- (4) "Board's Transfer Deed" means a transfer or transfers in registerable form of Board's Land, executed by the Board conveying the Board's Land to the Town;
- (5) "Land(s)" means:
  - (a) the Board's Land as it relates to the Board,
  - (b) the Town's Land as it relates to the Town, and
  - (c) both the Board's Land and the Town's Land as it relates to both the Board and the Town;
- (6) "New School Facility" mean the school facility to be built by the Board on the Town's Land;
- (7) "Purchaser" means:
  - (a) the Board as it relates to the transfer of the Town's Land to the Board, and
  - (b) the Town as it relates to the transfer of the Board's Land to the Town.

- (8) "Town's Transfer Deed" means a transfer or transfers in registerable form of the Town's Land, executed by the Town conveying the Town's Land to the Board;
- (9) "Vendor" means:
- (a) the Board as it relates to the transfer of the Board's Land to the Town, and
  - (b) the Town as it relates to the transfer of the Town's Land to the Board.

## **1.2. General**

Headings contained in this Agreement are inserted for convenience of reference only and are not to be considered for the purposes of interpretation. If anything is to be done on a day which is not a Business Day, the same shall be done either on the next succeeding Business Day or as otherwise expressly provided in this agreement. Words importing the singular shall include the plural and vice versa.

## **1.3. Governing Law**

This agreement shall be governed by and construed in accordance with the laws of the Province of Ontario.

## **2. Transfer of Lands**

### **2.1. Transfer of Board's Land to the Town**

Subject to the terms and conditions of this Agreement, the Board hereby agrees to transfer the Board's Land to the Town on the Closing Date.

### **2.2. Value and Payment**

For the purposes of calculating Land Transfer Tax, the value of the Board's Land has been agreed to be \$189,000.00, payable by certified cheque or wire transfer on closing, subject to adjustments, if any.

### **2.3. Transfer of Town's Land to the Board**

Subject to the terms and conditions of this Agreement, the Town hereby agrees to transfer the Town Land to the Board on the Closing Date.

### **2.4. Value**

For the purposes of calculating Land Transfer Tax, the value of the Town's Land has been agreed to be \$171,000.00, payable by certified cheque or wire transfer on closing, subject to adjustments, if any.

### **3. Investigation and Operation of the Lands**

#### **3.1. Risk, Damage and Insurance**

All buildings, structures, fixtures and improvements on the Board's Land and all other things being purchased shall be and remain until completion at the risk of the Board. Pending completion, the Board shall hold all insurance policies, if any, and the proceeds thereof in trust for the parties as their interests may appear and in the event of substantial damage, the Town may either terminate this Agreement and have all monies paid returned without interest or deduction or else take the proceeds of any insurance and complete the purchase. No insurance shall be transferred on completion.

#### **3.2. Representations and Warranties**

- (1) Each Vendor represents, and covenants that as at the Closing Date, with respect to the Land it is transferring under this Agreement, that:
  - (a) it has authority to enter into and to perform its obligations under this Agreement subject to the Minister of Education consent and approval and the transfer being completed;
  - (b) it has no knowledge of any act, (other than the Disposition and Acquisition sections and Regulations under the *Education Act* R.S.O, 1990, c. E.2,) proceeding or investigation pending or threatened which either affects or may affect in either case in a materially adverse way its title to the Lands being transferred; and
  - (c) it is not a non-resident of Canada and it will not be a non-resident of Canada on the Closing Date within the meaning of s. 116 of *the Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.).

#### **3.3. Title Investigation**

- (1) Each Purchaser shall be allowed until 6:00 p.m. on the 3<sup>rd</sup> day prior to the Closing Date (the "Requisition Date") to examine the title to the Land at its own expense and to satisfy itself that there are no outstanding work orders or deficiency notices affecting the Land, and that its intended use will be lawful. The Vendor hereby consents to the municipality or other governmental agencies releasing to Purchaser details of all outstanding work orders and deficiency notices affecting the Land, and Vendor agrees to execute and deliver such further authorizations in this regard as Purchaser may reasonably require.

Provided that the title to the Land is good and free from all registered restrictions, charges, liens, and encumbrances except as otherwise specifically provided in this Agreement and save and except for:

- (a) any registered municipal agreements and registered agreements with publicly regulated utilities providing such have been complied with, or security has been posted to ensure compliance and completion, as evidenced by a letter from the relevant municipality or regulated utility;
- (b) any minor easements for the supply of domestic utility or telephone services to the property or adjacent properties; and
- (c) any easements for drainage, storm or sanitary sewers, public utility lines, telephone lines, cable television lines or other services which do not materially affect the use of the property (all of which are "Permitted Encumbrances").

If within the specified times referred to in this section 3.3 any valid objection to title or to any outstanding work order or deficiency notice is made in writing to Vendor and which Vendor is unable or unwilling to remove, remedy or satisfy or obtain insurance (Title Insurance) in favour of the Purchaser and any mortgagee, (with all related costs at the expense of the Vendor), and which Purchaser will not waive, this Agreement notwithstanding any intermediate acts or negotiations in respect of such objections, shall be at an end and all monies paid shall be returned without interest or deduction and Vendor shall not be liable for any costs or damages. Save as to any valid objection so made by such day and except for any objection going to the root of the title, Purchaser shall be conclusively deemed to have accepted Vendor's title to the property.

#### **3.4. Title Evidence**

Save as expressly set forth in this Agreement, the Purchaser shall not call for the production of any title deed, abstract, survey or other evidence of title to a Land except such as are in the possession or control of the Vendor of such Land.

### **4. Conditions**

#### **4.1. Conditions Precedent**

- (1) The Board and the Town acknowledge and agree that this Agreement is subject to:
  - (a) the prior approval and authorization of the Minister of Education;
  - (b) the Town obtaining all necessary environmental assessments and approvals; and

- (c) the Board obtaining a geotechnical report affirming suitability of the Town's Land for construction of a New School Facility.
- (2) The Board and the Town acknowledge and agree that the Town has passed all by-laws and done all other things necessary to close and convey to the Board the Town's Land in compliance with all provisions of *the Municipal Act, 2001* and, without restricting the generality of the foregoing, any by-law enacted by the municipality which governs the acquisition and disposition of land.

#### **4.2. Vacant Possession**

- (1) On the respective Closing Dates, the Vendor will deliver to the Purchaser possession of the land transferred.

### **5. State of Lands**

#### **5.1. Lands As Is**

Subject to Paragraph 5.2, the parties acknowledge and agree that the Lands are being transferred on an As Is basis, and each releases the other, and their successors and assigns from any and all costs, claims, damage and liability arising or resulting, directly or indirectly, from the acquisition of the Land.

#### **5.2 UFFI**

The Board represents and warrants to the Town that during the time the Board has owned the property, the Board has not caused any building on the land to be insulated with insulation containing ureaformaldehyde, and that to the best of the Board's knowledge no building on the property contains or has ever contained insulation that contains ureaformaldehyde. This warranty shall survive and not merge on the completion of this transaction.

### **6. Closing**

#### **6.1. The Board's Closing Deliveries**

On the Closing Date, the Board will execute and deliver the following documents to the Town (unless otherwise provided, all in form reasonably satisfactory to the Town Solicitor);

- (1) written approval and authorization of the Minister of Education;
- (2) the Board's Transfer Deed;
- (3) a statutory declaration of an authorized officer of the Board, given in his or her capacity as an officer of the Board, confirming that the Board is not a non-resident of Canada and will not be a non-resident of Canada on the Closing Date within the meaning of s. 116 of the *Income Tax Act*;

- (4) evidence in the form of a statutory declaration of a senior officer of the Board, given in his or her capacity as an officer of the Board, of its registration under the *Excise Tax Act*, R.S.C. 1985, c. E-15 as amended, relating to the harmonized sales tax;
- (5) a statutory declaration of an authorized officer of the Board, given in his or her capacity as an officer of the Board confirming that all requirements of the *Education Act* R.S.O. 1990.c.E.2 relating to the carrying out of this Agreement by the Board have been complied with;
- (6) an undertaking from the Board to re-adjust all items on the statement of adjustments, if necessary; and
- (7) a Declaration of Possession in relation to the Board's Land.

## **6.2. The Town Closing Deliveries**

On the Closing Date, the Town will execute and deliver the following documents (unless otherwise provided, all in form reasonably satisfactory to the Board and its solicitors);

- (1) the Town's Transfer Deed;
- (2) evidence from the Town in the form of a statutory declaration of its registration under the *Excise Tax Act* relating to the harmonized sales tax;
- (3) an undertaking from the Town to re-adjust all items on the statement of adjustments, if necessary;
- (4) a Declaration of Possession in relation to the Town's Land; and
- (5) a statutory declaration of an authorized officer of the Town, given in his or her capacity as an officer of the Town confirming that all requirements of the *Municipal Act*, S.O. 2001, c.25 relating to the carrying out of this Agreement by the Town have been complied with.

## **6.3. Adjustments**

The parties will adjust for local improvement rates and all other items normally adjusted between a vendor and a purchaser in respect of the sale of property similar to the Lands as of the Closing Date (the Closing Date itself to be apportioned to the Purchaser), as well as the adjustment provided for in this Agreement, however the parties agree that no adjustment shall be made for realty taxes.



## **7. Miscellaneous**

### **7.1. Survival of Representations, Warranties, Covenants and Agreements.**

The representations, warranties, covenants and agreements of each of the parties under this Agreement shall not merge, but shall survive the conveyance of each Land. The Board and the Town covenant and agree to indemnify and save harmless the other from all costs, claims, damage and liability arising or resulting, directly or indirectly, from any misrepresentation by the indemnifying party in this Agreement, or by the failure on the part of the indemnifying party to perform any of its covenants in this Agreement, which indemnity shall also not merge but shall survive the conveyance of each Land.

### **7.2. Tender**

Any tender of documents, cheques or moneys may be made upon the solicitors for the respective parties to this Agreement.

### **7.3. Time**

Time shall be of the essence of this Agreement provided that the time for doing or completing any matter may be extended or abridged by an agreement in writing between the parties or their respective solicitors.

### **7.4. Planning Act Compliance**

The creation of any interest in lands pursuant to this Agreement is expressly subject to the condition of compliance with the provisions of the Planning Act.

### **7.5. Notices**

Any notice to be given in connection with this Agreement shall be in writing, shall state the clause of this Agreement pursuant to which it is given, and shall be given by delivery addressed to the recipient as follows:

(a) the Board at:

522 Second Street East  
Fort Frances, ON  
P9A 1N4

Attn: Heather Campbell  
Title: Director of Education

(b) the Town at:

201 Atwood Ave  
Box 488 Rainy River ON  
P0W 1L0

Attn: Veldron Vogan  
Title: Chief Administrative Officer/Clerk-Treasurer

**7.6. Entire Agreement**

This Agreement constitutes the entire agreement between the parties with respect to the transactions contemplated in this Agreement and its subject-matter and supersedes any prior written understanding or agreement, whether or not expressed to be binding, between them.

**7.7. Severability**

If any provision of this Agreement or its application to any person or circumstances is invalid or unenforceable to any extent, the Parties will negotiate in good faith to amend this Agreement so as to implement the intentions of the Parties in a valid and enforceable way but any such amendment and the conduct of any such negotiation are dependent on the concurrence of the Parties in their absolute discretion, respectively. In the event that such an amendment is not agreed on, the validity or enforceability of this Agreement shall be determined by the principles of the law of rectification.

**7.8. Amendment**

This Agreement and all of its provisions shall not be deemed or construed to be modified, amended, rescinded, cancelled or waived in whole or in part except by written amendment of the parties to this Agreement. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute waiver of any other provisions (whether or not similar), nor shall any such waiver constitute a continuing waiver unless expressly otherwise provided in writing.

**7.9. Force Majeure**

Whenever and to the extent that any party to this Agreement is unable to perform or is delayed or restricted in the performance of any obligation arising under this Agreement or any other agreement entered into by the parties pursuant to this Agreement by reason of any cause relating directly or indirectly from acts of God, civil or military authority, acts of public enemy, war, riots, crime, disturbances, insurrections, accidents, fire, explosions, earthquakes, floods, the elements, unusual delay by common carriers, unavoidable casualties, strikes, labour disputes, lock-outs, shortages of suitable parts, materials, labour or

transportation, disruption of utility service for causes other than non-payment thereof or anything beyond the control of any party whether or not a like or similar nature, the party having the obligation shall be relieved from the performance of this Agreement for so long as such cause exists, and the other party to this Agreement shall not be entitled to compensation for any loss, damages, inconvenience, nuisance or discomfort thereby occasioned.

**7.10. Successors and Assigns**

This Agreement shall bind and benefit the parties to this Agreement and their respective successor and assigns.

**7.11. Schedules**

The following schedules are attached to and form part of this Agreement:

- (1) Schedule "A", description of the Board's Lands; and
- (2) Schedule "B", description of the Town's Lands.

**7.12. Counterparts and Delivery**

This Agreement may be executed in counterparts, each of which so executed shall be deemed to be an original and such counterparts together shall be one and the same instrument. The parties hereto agree that this Agreement may be transmitted by facsimile, email or such similar device and that the reproduction of signatures by facsimile, email or such similar device will be treated as binding as if original and each party undertakes to provide to the other party hereto a copy of the Agreement bearing original signatures forthwith upon demand.

**IN WITNESS WHEREOF RAINY RIVER DISTRICT SCHOOL BOARD** has hereunto executed these presents under the hands of its officers duly appointed in that behalf.

\_\_\_\_\_  
Witness

**Rainy River District School Board**

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

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

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

I have authority to bind Rainy River District School Board.

**IN WITNESS WHEREOF THE CORPORATION OF THE TOWN OF RAINY RIVER**  
has hereunto executed these presents under the hands of its officers duly appointed in  
that behalf.

\_\_\_\_\_  
Witness

**The Corporation of the Town of Rainy River**

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

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

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

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

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

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

I have authority to bind the Corporation.

## Schedule A: the Board's Lands

Registered Owner: Rainy River District School Board

Property Location: 1 Mill Avenue, Rainy River, Ontario

Legal Description: PIN 56056 0078(LT)  
Parcel Plan-2 Sec SM39; Blk E Plan SM39 Atwood Except  
SLT4377, SLT24961; Rainy River

PIN 56056 0065(LT)  
Parcel Blk E-3 Sec SM39; Pt Blk E Plan SM39 Atwood as in  
SLT24961; Rainy River

Lot Size: 349.11' frontage containing 1.99 acres (Barnes Site Survey)  
MPAC has included the closed road allowance to the east  
which is not included with these PINs and overstates the  
area (2.35 acres).

Building Size: 37,802 ft<sup>2</sup> (MPAC)

Roll Number: 59 42 000 000 35700

Official Plan: Living Area

Zoning: "I" Institutional Zone

## Schedule B: the Town's Lands

Registered Owner: The Corporation of the Town of Rainy River

Property Location: Government Road, Rainy River, Ontario

Legal Description: PART of PIN 56055 1027(LT)  
PT LT 15 RIVER RANGE ATWOOD; PT LT 16 RIVER RANGE; PT  
1 PLAN 48R-4643; RAINY RIVER

Lot Size: 278.79m x 176.00m  
4.930ha

Roll Number: Part of 59 42 000 000 35800

Official Plan: Living Area

Zoning: "I" - Institutional