

THE CORPORATION OF THE TOWN OF RAINY RIVER

BY-LAW 1824-22

Being a By-law to authorize the execution of a Site Plan Agreement with
Rainy River District School Board ("the Owner")

WHEREAS the Owner proposes to develop a school, Child Care Centre and related facilities on the lands more particularly described in the Site Plan Agreement marked Exhibit "A" to this By-law and the execution of such Agreement is a condition of approval of the plans and drawings relating to such development pursuant to Subsection 41(7) of the *Planning Act*;

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 COUNCIL OF THE CORPORATION OF THE TOWN OF RAINY RIVER HEREBY ENACTS AS FOLLOWS:

1. Upon fulfillment by the Owner of the conditions set forth in Paragraph 3 of the aforementioned Agreement, the Chief Administrative Officer/Clerk-Treasurer is authorized to execute a Site Plan Agreement with Rainy River District School Board substantially in the form of Schedule "A" hereto.
2. 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.
3. 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 18th day of August 2022



Deputy Mayor



Chief Administrative Officer/
Clerk-Treasurer

July 28, 2022

SITE PLAN AGREEMENT
RAINY RIVER JK-12 SCHOOL

THIS AGREEMENT made effective on the day of , 2022

BETWEEN:

RAINY RIVER DISTRICT SCHOOL BOARD

Hereinafter called the "Developer"

OF THE FIRST PART

AND

THE CORPORATION OF THE TOWN OF RAINY RIVER

Hereinafter called the "Municipality"

OF THE SECOND PART

WHEREAS the Developer is a School Board established under the *Education Act* of the Province of Ontario and is the administrator of the local public primary and secondary schools located within the Town of Rainy River;

AND WHEREAS the lands affected by this Agreement are the lands described in Schedule "A" hereto annexed, and are also shown on a Site Plan attached hereto as Schedule "B" (the "Site Plan"), which lands are collectively referred to herein as the "said lands";

AND WHEREAS the Developer is the owner of the said lands;

AND WHEREAS the Developer proposes to develop the said vacant lands for a new Rainy River High School and Elementary School and Child Care Centre and to accommodate JK-12 pupils and ensuring off-street parking for all staff including those of the Child Care Centre.

AND WHEREAS the said development is a development within the meaning of Section 41 of the *Planning Act*, R.S.O. 1990 c.P.13;

AND WHEREAS the Municipality has passed a By-law pursuant to the provisions of the said Section 41 designating the said lands as subject to Site Plan Control;

AND WHEREAS Clause 41(7)(c) of the said Act provides that a Municipality may require an owner to enter into one or more agreements dealing with and ensuring that any or all of the facilities mentioned in Clause 41(7)(a) are provided and, as mentioned in Clause 41(7)(b), are maintained;

AND WHEREAS Subsection 41(10) of the said Act provides that such an agreement may be registered against the land to which it applies;

AND WHEREAS it was agreed that execution of this Agreement may be deferred until the Municipality is satisfied as to various preliminary matters;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the premises and for other good and valuable consideration and the sum of Two Dollars (\$2.00) of lawful money of Canada now paid by each of the parties hereto to each of the other parties hereto, (the receipt whereof is hereby acknowledged), the parties hereto covenant and agree with one another as follows:

1. **SCOPE OF AGREEMENT**

1.1 Description of Lands - The lands affected by this Agreement are the lands described in Schedule "A" hereto attached, and also referred to herein as the "said lands".

1.2 Conformity with Agreement - The Developer covenants and agrees that all new or additional work performed on the said lands shall be in conformity with:

- a) The provisions of this Agreement;
- b) All Plans and Schedules attached hereto;
- c) All approvals and authorizations issued by the Town of Rainy River ("the Municipality"); and
- d) All applicable Municipal By-laws and all applicable Provincial and Federal legislation.

1.3 Reliance upon Representations - The Developer acknowledges that:

- a) It has made representations to the Municipality that it will complete all on-site and off-site construction, grading, storm water management and landscaping required herein, in accordance with the Plans and schedules filed and accepted by the Municipality; and
- b) The Municipality has entered into this Agreement in reliance upon these representations.

1.4 Schedules Attached - The following schedules are attached to, and form part of, this Agreement:

Schedule "A"	-	Description of Lands
Schedule "B"	-	Site Plan
Schedule "C"	-	Engineering Provisions
Schedule "D"	-	Additional Plans

2. MODIFICATION OF PLANS AND SPECIFICATIONS

2.1 There shall be no changes in the Schedules attached hereto, or to any Drawings, Plans or Specifications filed and accepted on this project unless such changes have been first submitted to, and accepted by, the Municipality or its authorized representative.

3. CONDITIONS PRIOR TO EXECUTION OF AGREEMENT BY THE MUNICIPALITY AND CONDITIONS PRIOR TO ISSUANCE OF A FULL BUILDING PERMIT

- 3.1 Prior to the execution of this Agreement by the Municipality, the Developer shall:
- a) Land Ownership – be the registered owners in fee simple of the lands described in Schedule "A",
 - b) Construction/Engineering Drawings, Plans & Specifications- have supplied to the Municipality and received approval of those Drawings, Plans and Specifications as described in Subsection 41(4) of the said Act,
 - c) Utilities Confirmation - have arranged for Just Energy, Hydro One Networks Inc., and Bell Canada to contact the Municipality confirming that they have been informed of the project and have reviewed the development plans and have no objection thereto,
 - d) Fire Chief Approval - have filed with the Municipality a letter from the Fire Chief of the Municipality confirming and approving of the proposed plans for fire protection and specifying any equipment or appurtenances required.

4. MUNICIPAL OFF-SITE SERVICES BY THE DEVELOPER

4.1 The Developer will construct and install at its expense the hereinafter required Municipal Services. Such services shall be constructed in accordance with the Standards and Specifications required by the Municipality and under the direction and supervision of a practising Professional Engineer retained by the Developer who will certify construction to the satisfaction of the Municipality. These services may be summarized as follows:

- a) The work to include grading, granulars, asphalt, storm water management and associated ditching, including access to Little Street, all in accordance with plans prepared by TBT Consulting Group and approved by the Municipality.

5. INTERNAL ON-SITE SERVICES

5.1 The Developer shall construct all internal services to the Standards, Specifications and Requirements of the Municipality and all applicable law. Such services include but are not limited to the following:

- a) All items as identified on the Site Plan attached as Schedule "B".

5.2 All Internal Services to be constructed by the Developer shall be completed under the direction and supervision of a practising Professional Engineer retained by the Developer who will certify construction to the satisfaction of the Municipality.

5.3 The Developer agrees to maintain, repair and when necessary, replace the Internal Services so they will at all times be in good working order and in conformity with the terms of this Agreement. If, in the opinion of the Municipality, the Developer is not complying with the terms of this paragraph then the Municipality, its servants, agents or sub-contractors shall have the right, upon giving to the Developer thirty (30) days written notice, to enter upon the said lands and carry out any work, at the expense of the Developer, necessary to maintain, repair or if necessary replace the said Internal Services.

5.4 SPECIAL EXEMPTION – PARKING AND LOADING SPACES

5.4.1 The Developer shall provide not less than 90 parking spaces and 1 loading space dedicated to the development on the said lands. The Rainy River Zoning By-law requires 188 parking spaces unless exempted in accordance with this Site Plan Agreement.

5.4.2 This Agreement hereby exempts the Developer from providing the additional parking spaces otherwise required by the Zoning By-law on the said lands.

5.4.3 This Section 5.4 is made pursuant to the said provisions of Section 5.21 of the Zoning By-law.

6. "AS RECORDED DRAWINGS" - MUNICIPAL AND INTERNAL SERVICES

6.1 Following the completion of the construction of the Municipal and Internal Services the Developer shall file with the Municipality two complete sets of "as recorded drawings" in printed form and one complete set-in digital format for all Municipal Services and the Internal Services.

7. ACCEPTANCE OF MUNICIPAL SERVICES / COMPLETION OF INTERNAL SERVICES

7.1 During construction of the Municipal Services and prior to their acceptance, the Developer will at all times maintain proper vehicular access to the said lands in such a manner as may be specified by the Municipality so as to minimize disruption to vehicular traffic using Little Street.

7.2 In the event that proper vehicular access is not provided as so specified herein, then the Municipality through its servants, contractors or agents, may, (but shall not be obligated to) provide and maintain such access as may be required and all costs so incurred by the Municipality shall, within thirty (30) days of demand, be paid by the Developer to the Municipality and the Municipality shall not by taking such action be deemed in any way to have accepted the services for the said development upon which such work was done.

7.3 Upon certification of the completion of the Municipal Services and/or Internal Services by the Professional Engineer retained by the Developer to the satisfaction of the Municipality, the Municipality shall pass a by-law confirming acceptance of the Municipal Services and/or completion of the Internal Services as the case may be.

7.4 The Developer agrees that there will be no occupancy or use of the proposed buildings on the said lands whatsoever until:

- (a) The Municipality has received a certification of completion of the Municipal Services and the Internal Services set out in this Agreement by the Professional Engineer to the satisfaction of the Municipality.

8. EMERGENCY SITUATION

8.1 If as a result of any work undertaken by the Developer, or its servants, or agents, or contractors there exists in the opinion of the Municipal Chief Building Official (CBO) an emergency situation which requires immediate attention in the interest of public safety or to avoid damage to private or public property, such work may be done immediately by the Municipality at the expense of the Developer, but notice shall be given to the Developer at the earliest possible time.

9. MODIFICATION OF SERVICES

9.1 If at any time and from time to time during the construction of the development, and at any stage thereof, the Municipality, in consultation with the Developer's Engineer, determines that a modification of design of any Municipal Services required to be installed under the provisions of this Agreement is occasioned by site conditions, or is necessary to maintain the standard of any of the Municipal Services related thereto the Developer shall construct, install or perform such modifications of services as may be required.

10. REGISTRATION OF AGREEMENT AND OTHER DOCUMENTS

10.1 The parties hereto consent to the registration of this Agreement by the Municipality upon the title of the said lands, which registration shall be included as a legal expense to the Developer. The Developer further agree that they will execute such further and other documents, consents, or applications as may be reasonably required by the Municipality for the purpose of any registration against the said lands, or for the purpose of giving effect to the provisions required under this Site Plan Agreement.

11. EXPENSES TO BE PAID BY DEVELOPER

11.1 Every provision of this Agreement by which the Developer is obliged in any way shall be deemed to include the words "at the expense of the Developer" unless the context otherwise requires.

11.2 The Developer shall pay such fees as may be invoiced to the Municipality by its Solicitor, Engineer, or Land Use Planner in connection with all work to be performed as a result of the provisions of this Agreement.

11.3 All expenses for which demand for payment has been made by the Municipality shall bear interest at the rate of 15% per annum commencing fifteen (15) days after demand.

11.4 In the event that the Municipality finds it is necessary to engage the services of an engineer or technical personnel not permanently employed by the Municipality, to review the plans of the Developer, and/or carry out on-site inspections of the work performed, the Municipality will advise the Developer accordingly of this need, and the costs of such outside engineers so engaged shall be the responsibility of the Developer. The Municipality may require a deposit for this purpose.

12. ATTACHED SCHEDULES

12.1 It is agreed that everything included in this Agreement and the Schedules attached hereto, together with all drawings and plans specified herein filed by the Developer and accepted by the Municipality shall be included in and form part of this Agreement.

13. COMMENCEMENT OF CONSTRUCTION AND COMPLETION

13.1 The Developer agrees to commence construction of the Municipal and Internal Services for the development within twelve (12) months of the registration of this Agreement and to complete construction within twenty-four (24) months thereafter.

13.2 If a Building Permit is not taken out, or the development not completed within the period referred to above, the Municipality may terminate this Agreement. Thereafter any development would require Site Plan approval and a further Site Plan Agreement. The Developer may apply to Council of the Municipality for an extension of the time periods set out herein which may be granted at Council's sole discretion.

14. RESTRICTIVE COVENANTS

14.1 The Developer agrees that the covenants, agreements and obligations agreed to in this Agreement are and shall be of the same force and effect to all intents and purposes as a covenant, the burden of which shall run with the said lands and each and every part of this Agreement shall extend to, and be binding upon and inure to the benefit of each and all of the, administrators, successors-in-title, and assigns of the parties hereto respectively.

15. GENERAL ITEMS

15.1 The term "Municipality" in this Agreement shall include persons to whom the Municipality has delegated authority to act on its behalf for the purpose of carrying out any of the provisions of this Agreement.

16. INDEMNIFICATION FROM LIABILITY AND RELEASE

16.1 The Developer covenants and agrees with the Municipality, on behalf of itself, its successors, and assigns, to indemnify and save harmless the Municipality from any and all actions, suits, claims and demands whatsoever which may arise either directly or indirectly by reason of any act or omission of the Developer its servants, agents and contractors or done or omitted to be done on its or their behalf in connection with the carrying out of the provisions of this Agreement.

16.2 The Developer further covenants and agrees to release and forever discharge the Municipality from and against all claims, demands, causes of actions, of every nature and type whatsoever that may arise either as a result of the failure of the Municipality to carry out any of its obligations under this Agreement, or, as a result of the Municipality performing any municipal work on adjacent properties which may damage or interfere with the works of the Developer, provided that such default, failure or neglect was not caused intentionally or through negligence on the part of the Municipality, its servants, agents or subcontractors.

17. SNOW REMOVAL

17.1 The Developer covenants and agrees to arrange for private snow removal from the said lands. The Developer acknowledges that the Municipality will not provide snow removal services within the said lands.

18. NOTICES TO PARTIES

18.1 Any Notice to be given by any party under this Agreement may be given by:

- (a) Personal service on the parties hereto, or
- (b) Prepaid first-class mail addressed to the other party at their last known address, and which shall be deemed to have been received 72 hours after mailing.
- (c) Email – May be sent to the last known e-mail address of the other party. E-mail messages which shall be deemed to have been received the day they were sent up to the hour of 4:30 p.m. and any time an email message is sent thereafter, it shall be deemed to have been received on the following day.

18.2 Service on the Developer's authorized agent, together with the sending of a copy of the Notice by prepaid first-class mail addressed to the Developer at the Education Centre in Fort Frances, shall also constitute service on the Developer.

19. TIME OF THE ESSENCE

19.1 The parties hereto agree that time shall be of the essence in this Agreement.

20. ESTOPPEL OF DEVELOPER

20.1 The Developer agrees to not call into question directly or indirectly in any proceeding whatsoever, in law or in equity, or before any administrative tribunal, the right of the Municipality to enter into this Agreement and to enforce each and every term, covenant and condition herein contained, and this Agreement may be pleaded as an estoppel against the Developer in any such proceedings.

21. INTERPRETATION

21.1 It is hereby agreed that in construing these presents the word "Developer" and the personal pronoun "they" or "theirs" relating thereto and used therewith, shall be read and construed as "Developers" and "his", "hers", "its" or "their" respectively as the number and gender of the party or parties referred to in each case requires and the number of the verb agreeing therewith shall be so construed as agreeing with the said word or pronoun so substituted.

21.2 All covenants, liabilities, and obligations entered into and imposed hereunder upon the Developer shall be equally binding upon his, her, its or their heirs, executors, administrators and assigns, or successors and assigns as the case may be, and that all such covenants and liabilities and obligations shall be joint and several.

21.3 The term "Municipal Engineer" as used in this Agreement shall refer to the Engineer employed or retained by the Municipality or to such other person as may be appointed by the Municipality to exercise any authority for the relevant purpose hereunder.

THIS AGREEMENT shall inure to the benefit of and be binding upon each of the parties hereto and their respective heirs, executors, administrators, successors, and assigns.

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the following dates:

By the Developer on the ____ day of _____, 2022.

RAINY RIVER DISTRICT SCHOOL BOARD

Per: _____

Name: Laura Mills
Title: Superintendent of Business

Per: _____

Name: Heather Campbell
Title: Director of Education

We have authority to bind the School Board.

By The Corporation of the Town of Rainy River on the ____ day of _____, 2022.

THE CORPORATION OF THE TOWN OF RAINY RIVER

Per: _____

Name: Veldron Vogan
Title: Chief Administrative Officer/Clerk

I have authority to bind the Corporation.

SCHEDULE "A"

THIS IS SCHEDULE "A" TO THE SITE PLAN AGREEMENT BETWEEN THE CORPORATION OF THE TOWN OF RAINY RIVER AND THE RAINY RIVER DISTRICT SCHOOL BOARD

DESCRIPTION

The land subject of this Agreement is designated as follows:

1. PT LT 15 RIVER RANGE ATWOOD; PT LT 16 RIVER RANGE; PT 1 PLAN 48R-4643;
RAINY RIVER

PART of PIN 56055 1027(LT)

SCHEDULE "B"

THIS IS SCHEDULE "B" TO THE SITE PLAN AGREEMENT BETWEEN THE CORPORATION OF THE TOWN OF RAINY RIVER AND THE RAINY RIVER DISTRICT SCHOOL BOARD

I SITE PLAN

The Site Plan is composed of three (3) drawings and the text thereon or therewith:

1. Site Plan Schedule 'B' New K-12 School Facility, Childcare and Family Centre, Serino Architects, released June 22, 2022, and stamped received by the Town of Rainy River on June 23, 2022.
2. OBC and Life Safety Plan A1.01, Serino Architects, released June 22, 2022, and stamped received by the Town of Rainy River on June 23, 2022.
3. Elevations A3.00, Serino Architects, released June 22, 2022, and stamped received by the Town of Rainy River on June 23, 2022.

The above drawings are incorporated by reference and form part of this Agreement. A copy of the said Site Plan may be viewed at the offices of the Town of Rainy River during business hours.

SCHEDULE "C"

THIS IS SCHEDULE "C" TO THE SITE PLAN AGREEMENT BETWEEN THE CORPORATION OF THE TOWN OF RAINY RIVER AND THE RAINY RIVER DISTRICT SCHOOL BOARD

ENGINEERING PROVISIONS1. DEVELOPER'S CONSULTING ENGINEER

1.1 The Developer agrees to retain the services of a firm of Professional Engineers, registered to practice in the Province of Ontario as consulting engineers, to provide all municipal engineering services in accordance with the performance standards for "Consulting Engineering Services to Municipalities" as defined by the Association of Professional Engineers of Ontario (APEO). Such firm of Professional Engineers (hereinafter called "the consulting engineer") must be approved by the Municipality. The consulting engineer shall carry out all design work, prepare plans, specifications, provide such information as is required by the Municipality, estimate costs, prepare and submit the necessary applications for approvals, contract for the construction or installation of the said services, call tenders, report on tenders received, construction layout, job records, obtain and record "as constructed" information, provide resident inspection and general supervision and prepare progress reports, and progress payment certificates. The Municipality may place a Municipal Inspector on the work, at the expense of the Developer.

2. CONTRACTOR TO BE APPROVED

2.1 If Municipal Services are to be installed by a contractor selected by the Developer, such contractor shall be prior approved by the Municipality.

3. INSPECTION BY MUNICIPALITY

3.1 The Municipal Chief Building Official (CBO) shall have the right to inspect the installation of works and services at all times. If at any time the work and construction of the services is, in the opinion of the Municipal Engineer, not being carried out in accordance with the plans and specifications, or in accordance with good engineering practice, then the Municipality may stop all or any part of the work on the installation of the services for any length of time until such work has been placed in satisfactory condition, and in the event that the Municipal Engineer deems that the work has not proceeded in a proper manner, then he or she may stop the work by that Contractor and require that another Contractor be placed on the job to complete such works, and the cost involved in such replacement and completion of the work shall be paid for by that Developer.

4. INCOMPLETE OR FAULTY WORK

4.1 In the event that the Developer fails to install the herein required Municipal Services within the time specified by the Municipal Engineer, or if in the sole opinion and discretion of the Municipal Engineer the Developer:

- (a) is improperly performing the work, and/or,
- (b) has caused unreasonable delays so that the conditions of this Agreement are not being complied with or are being carelessly executed, and/or,
- (c) is refusing to re-do, or again perform such work as may be rejected by the Municipal Engineer as defective or unsuitable, and/or
- (d) is in default of performance of any of the terms of this Agreement, then in such case the Municipal Engineer shall notify the Developer of such fault or neglect and may specify the time within which such default or neglect shall then be remedied, and if it is not remedied by the specified time, then
 - (1) the Municipal Engineer shall have full authority and power to stop all work by the Developer, its servants, or agents and if the Municipality so elects it may purchase such material, tools and machinery and employ such workmen or contractors as in the Municipal Engineer's opinion shall be required to complete such work, and,

- (2) in the event that the cost of any work performed by the Municipality exceeds the realizable value of the security available to the Municipality then the Developer shall, within fifteen (15) days of demand by the Municipality, reimburse the Municipality for such excess expenses, and if it is not paid within the fifteen (15) days, such unpaid balance shall bear interest at the rate of 12% per annum and if not paid may be applied as a charge on the said lands by the Municipality.

5. LAND TO BE FREE OF DEBRIS

- 5.1 The Developer covenants and agrees that the said lands will not be used by the Developer for the depositing of debris obtained from the development of the said lands, and further covenants and agrees to remove at its own expense any junk, debris, or refuse upon the said lands as required by the Municipality.

6. CONSTRUCTION ACT

- 6.1 The Developer agrees that it will hold back from its payment to any Contractor who may construct services, such amounts as may be required under the provisions of the *Construction Act* of Ontario, and further agrees to indemnify and save harmless the Municipality from and against all claims, demands, actions, causes of actions and cost resulting from any construction lien filings or resulting in any way in connection with the work being performed by the Developer herein, and, on demand by the Municipality, the Developer will take such steps as are necessary to immediately discharge all liens upon the services.

7. REPAIR OF DAMAGE

- 7.1 The Developer shall be responsible for the repair of any damage (including the removal of foreign materials on municipally owned lands) caused as a result of any construction being performed by the Developer pursuant to the provisions of this Agreement or pursuant to any Building Permit issued by the Municipality to the Developer.

8. OWNERSHIP OF MUNICIPAL SERVICES

- 8.1 The parties hereto agree that the Municipal Services constructed by the Developer, pursuant to the provisions of this Agreement, shall be exclusively owned by the Municipality.

9. WORK AND INSPECTION CHARGES TO DEVELOPER

- 9.1 The cost of any work, including inspection, performed by the Municipality pursuant to the provisions of this Agreement, shall be calculated by the Municipal Treasurer, whose decisions shall be final and binding. Such sums shall be payable by the Developer on demand, it being understood and agreed that the Municipality would not have executed this Agreement without the assumption by the Developer of all the financial obligations imposed by this Agreement.

10. ACCESS DURING CONSTRUCTION

- 10.1 The Developer agrees to maintain access to all properties adjacent to the Municipal Services being constructed, during the period of construction, so that the owners of such properties shall have proper ingress and egress to Little Street.

11. RELOCATION OF SERVICES

- 11.1 It shall be the responsibility of the Developer to make the necessary arrangements and be responsible for the costs for the removal and relocation of any existing Municipal Services which require relocation in the course of, or in connection with, the construction to be performed under this Agreement.

SCHEDULE "D"

THIS IS SCHEDULE "E" TO THE SITE PLAN AGREEMENT BETWEEN THE CORPORATION OF THE TOWN OF RAINY RIVER AND THE RAINY RIVER DISTRICT SCHOOL BOARD

ADDITIONAL PLANS, REPORTS AND CALCULATIONS

1. Rainy River New K-12 School Stormwater Management Design Brief and Plan, TBT Engineering Consulting Group, TBTE21344, issued February 11, 2022, revised, and stamped received by the Town of Rainy River.
2. Rainy River New K-12 School Civil Typicals and Details, TBT Engineering Consulting Group, issued May 27, 2022, revised, and stamped received by the Town of Rainy River.

These Plans and reports are incorporated by reference into this Agreement and a copy of these documents may be viewed at the Municipal Office of the Town of Rainy River or obtained from the Developer.