

## **MEMORANDUM**

**To:** Dawn Adams – Planning & Property Development Services  
Jerry Stoangi – Senior Manager, Plant Services  
Gilbert Luk – Planning & Property Development Services

**From:** **Graham Seaman, Director of Sustainability & Asset Management**

**Copy To:** Arvin Prasad, Commissioner, Development Services  
Brenda Librecz, Commissioner, Community and Fire Services  
Trinela Cane, Commissioner, Corporate Services

**Date:** December 16, 2019

**Subject:** FLATO Markham Theatre & Unionville High School (UHS) Proposed Shared Use Agreement - Summary of Key Terms and Conditions

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This memorandum is being exchanged between staff at the York Region District School Board (the “**YRDSB**”) and staff at The Corporation of the City of Markham (the “**City**”) with a view of determining whether the City and YRDSB have sufficient common ground to commence negotiations of either a formal, binding shared use agreement (“**Shared Use Agreement**”) for the shared use, maintenance, repair and replacement of certain facilities located at Unionville High School and grounds owned by YRDSB (“**UHS**”) and the Flato Markham Theatre (the “**Theatre**”) owned by the City.

This memorandum is not binding upon the parties. Without limiting the generality of the foregoing, this memorandum does not bind either party to enter into the Shared Use Agreement. This memorandum only describes the principal terms and conditions of the Shared Use Agreement recommended by staff at both YRDSB and the City, subject at all times to obtaining approval to enter into the Shared Use Agreement by both Council of the City of Markham and the Board of YRDSB and the full execution of a definitive and legally binding Shared Use Agreement.

1. General terms

- a. Recognition of how the site including the Theatre and UHS was originally constructed to be considered as a campus with shared use of the grounds and facilities.
  - UHS and the Theatre were constructed with shared services;
  - UHS provides heating and cooling supply to the Theater.
  - UHS was built without a stage with the understanding that UHS would be able to use the Theatre facilities under mutually agreed upon terms
- b. Both parties will continue to foster a cooperative relationship with each other in the operation, maintenance and repair of certain shared facilities at UHS and the Theatre. This cooperative relationship has been in effect in practice since the two facilities were open even though there has not been an executed agreement
- c. The maintenance and use of the sportsfields at UHS are excluded from this Shared Facilities Agreement as they are covered under separate agreement.

- d. A Management Committee is to be established (3 representatives per party) and shall meet regularly on the operation, maintenance and repair of shared facilities at UHS and the Theatre. Disputes will be resolved by escalating matters to senior staff of both parties. The City's representatives include staff from the Theatre, Sustainability and Asset Management, and Operations departments. The Board's representatives include; Planning & Property Development Services and Plant Services. More details are provided in the Shared Use Agreement.
    - e. The cost sharing arrangement between the two parties for shared facilities at the Theatre and UHS will be reviewed every 5 years to ensure it remains equitable in the spirit of the agreement. The Shared Use Agreement will address insurance, liability and indemnity.
    - f. The term of the Shared Use Agreement will be 28 years commencing the date it is executed. The term will approximately coincide with the length of the proposed heating supply agreement between YRDSB and Markham District Energy (MDE), which will have a term of 30 years. The term of the Shared Use Agreement will be 2 years shorter than the term of the heating supply agreement between YRDSB and MDE in anticipation of negotiations and planning prior to the expiry of the heating supply agreement between YRDSB and MDE. Cooling supply is already provided by MDE. The Shared Use Agreement is contingent on the execution of agreement between YRDSB and MDE for the installation of heating for UHS and the Theatre.
2. Maintenance of Grounds
  - a. The City, at YRDSB's cost, will maintain landscaping on UHS property excluding the sportsfields, but including flowerbeds, and trees, and will provide grass cutting consistent with the City's current standards.
  - b. The City, at YRDSB's cost, will provide snow clearing to UHS parking and shared driveways consistent with snow clearing at the Civic Centre. UHS will be responsible for snow clearing of their walkways. The attached maps shows the shared driveways.
  - c. The City will maintain the streetlights on the shared driveways shown on the attached maps themselves.
  - d. All capital repairs and replacements are the responsibility of the individual parties within the boundaries of their own property, except for the shared heating and cooling system (see Section 3).
  - e. YRDSB will illuminate the rear parking lot behind the Theatre from dusk until 2am.
  - f. The cost of maintenance for landscaping by the City for UHS property will be increased by CPI (Toronto CPI All-Items) annually from December to December.
  - g. Two YRDSB concrete bunkers on the YRDSB property adjacent to the Theatre loading dock will be moved to a mutually agreed upon location.
3. Theatre Heating and Cooling
  - a. YRDSB will pay for heating and cooling UHS and the City will pay for heating and cooling the Theatre. Both parties will pay for their share of the annual billed amount based on usage recorded by the respective buildings meters for:
    - Heating - Natural Gas (m3 equivalent) from MDE or by conventional heating means
    - Cooling - Electricity (kWh equivalent) from MDE
    - Respective buildings meters will be calibrated regularly by an independent party based on industry best practices.
  - b. YRDSB will invoice the City at the end of each year for energy used minus the cost of landscaping and snow clearing (based on the costs in the attached spreadsheet). The costs between January and December each year will be set out on an invoice to be delivered in Q1 of the following year.

- c. Future capital repairs and replacement cost for the shared heating and cooling system will be shared by the City and the YRDSB based on the gross floor area (36% City and 64% Board).
  - d. At this time, the heating system is due for upgrade. The City will pay its share of the cost of the upgrade to MDE (based on the above) up to a maximum of \$252,000, which was approved by City Council through the 2019 budget process.
4. Theatre Usage by UHS
- a. UHS may use Theatre facilities under mutually agreed upon terms set out in this section.
  - b. UHS is to have access to the Rehearsal Hall at no cost when available and with reasonable notice.
  - c. UHS will have access to the main theatre (with house lights only) at no cost when available and with reasonable notice during week days only to maximum 30 occurrences (uses) per year.
  - d. YRDSB will pay for actual costs of any technical support provided by the Theatre that are over and above house lights.
  - e. Additionally, UHS is to have access to the main theatre with full support (technician, house manager, usher) to maximum of 30 occurrences per year, and pay the base educational fee, (per Theatre fee schedule) and the support cost at City's straight cost with no mark up (estimated at \$40,000/year)
    - In recognition of the cooling capital improvement by the YRDSB, the City will provide for the first 12 years from signing of the Shared Use Agreement that paid bookings are to be credited by \$5,000 per year, to the maximum of \$60,000 total.\*
5. Use of UHS by the City
- a. City (Theatre) is to have access to the two Drama Rooms, Dance Studio and Small Gymnasium during the March Break week and summer break (8 weeks per year) free of charge when available.
  - b. UHS will confirm for the City the booking of the Drama Rooms, the Studio and the small Gymnasium for the March break week by June 30<sup>th</sup> of the previous year
  - c. UHS will confirm for the City booking of the rooms and gymnasium for the summer break by September 30<sup>th</sup> of the previous year.

The proposed next steps are summarized below:

1. Staff at YRDSB and the City confirm their agreement with the terms of this memorandum and agree to recommend them to their respective Council and Board for approval
2. Staff at the City and YRDSB to seek approval to enter into the Shared Use Agreement on the above noted terms from their respective Council and Boards.
3. Draft and Finalize Agreement – Both parties engage solicitors to draft and finalize the agreement.
4. Both parties to execute Shared Use Agreement.
5. YRDSB to execute heating supply agreement with MDE and initiate conversion of heating system to MDE.
6. Establish Management Committee – Identify staff to form the Management Committee. Management Committee to prepare terms of reference and continue regular communication between two parties.

\*Additional Background:

Recognition of the capital contribution: YRDSB solely funded the capital cost of the cooling system when it was converted to MDE at \$885K. The City did not contribute to the improvement. Based on the cost sharing formula in Section 3, City would have been responsible for 36% of the cost (\$319K City's share). The City did not pay this amount as there was no agreement in place.

A separate set of energy meters (heating and cooling) was installed by YRDSB for the Theatre in 2017 at the City's cost of \$24,825.42

Attachment: Site map and UHS & Theatre Cost Analysis (Excel)

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