



The Municipal Corporation of the
Town of Fort Erie

Special Council Meeting Agenda

Tuesday, July 28, 2020 - 5:00 PM

Council Chambers via Video Teleconference

Due to the COVID-19 Pandemic and the Closure of Town Hall
All electronic meetings can be viewed at:

Town's Website:

<https://www.forterie.ca/pages/CouncilAgendasandMinutes>

Town's YouTube Channel: www.youtube.com/townofforterie

or click on the YouTube icon on the home page of the Town's
website (www.forterie.ca) or Cogeco TV

Page

1. **Call to Order**
2. **Invocation**
3. **Roll Call**
4. **Announcements/Addenda**
5. **Declarations of Pecuniary Interest**
6. **Report**

3 - 8

CAO-13-2020

Agreement between The Corporation of the Town of Fort Erie and JPAS International Inc. for the Acquisition of the Former Fort Erie Public School Site - Partial Return of Land Sale Deposit and Contingent Liability Funds

Resolution:

That: Council approves a return of the Land Sale Deposit provided by JPAS International Inc. for the purchase of the Fort Erie Secondary School in the amount of \$135,000.00, and further

That: Council approves a reduction in the contingent liability payment held by The Corporation of the Town of Fort Erie held as an indemnity as

required by the District School Board of Niagara, from \$2,000,000 to \$1,000,000, and further

That: The Town of Fort Erie returns \$1,135,000 of the held funds to JPAS International Inc. upon receipt of the executed Acknowledgement, attached as Appendix “1” to Administrative Report No. CAO-13-2020.

[CAO-13-2020 - FEIA Funding Reconciliation](#)

7. Consideration of By-laws

- | | | |
|--------|----------------|--|
| 9 - 12 | 73-2020 | To Authorize the Entry into a Renewal Agreement with Fort Erie Underwater Recovery Unit Inc. (Kinsmen Pool)
73-2020 Renewal Agreement Kinsmen Pool |
| 13 | 74-2020 | To Authorize entry into an Agreement with Her Majesty the Queen in right of Ontario as represented by the Minister of Agriculture, Food and Rural Affairs under the Rural Economic Development (RED) Program
74-2020 BYLAW RED Grant Contribution Agreement |
| 14 | 75-2020 | To Confirm the Actions of Council at its Special Council Meeting Held on July 28, 2020
75-2020 Confirmatory |

8. Adjournment



Prepared for	Special Council	Report No.	CAO-13-2020
Agenda Date	July 28, 2020	File No.	120902

Subject

AGREEMENT BETWEEN THE CORPORATION OF THE TOWN OF FORT ERIE AND JPAS INTERNATIONAL INC. FOR THE ACQUISITION OF THE FORMER FORT ERIE PUBLIC SCHOOL SITE – PARTIAL RETURN OF LAND SALE DEPOSIT AND CONTINGENT LIABILITY FUNDS

Recommendations

THAT Council approves a return of the Land Sale Deposit provided by JPAS International Inc. for the purchase of the Fort Erie Secondary School in the amount of \$135,000.00; and further

THAT Council approves a reduction in the contingent liability payment held by The Corporation of the Town of Fort Erie held as an indemnity as required by the District School Board of Niagara, from \$2,000,000 to \$1,000,000; and further

THAT The Town of Fort Erie returns \$1,135,000 of the held funds to JPAS International Inc. upon receipt of the executed Acknowledgement, attached as Appendix “1” to Administrative Report No. CAO-13-2020.

Relation to Council’s 2018-2022 Corporate Strategic Plan

Not applicable

List of Stakeholders

- Residents and Businesses of the Town of Fort Erie
- JPAS International Inc.
- District School Board of Niagara

Prepared and Approved by:

Original Signed

Tom Kuchyt, CET
Chief Administrative Officer

Purpose of Report

The purpose of the report is to obtain the Town Council's concurrence to:

- 1) reimburse JPAS International Inc. \$135,000 in Land Sale Deposit funds that have been held in trust; and
- 2) reduce the contingent liability payment held by the Town as an indemnity as required by the District School Board of Niagara from \$2,000,000 to \$1,000,000; and
- 3) the execution of the Acknowledgement for the release of the funds.

Analysis**Background (as previously provided in Administrative Report No. CAO-09-2020)**

The Board of Trustees of the District School Board of Niagara ("DSBN") declared the former Fort Erie Public School site at 474 Central Avenue and the former Fort Erie High School site at 7 Tait Avenue as surplus to their needs.

The Town submitted an Expression of Interest and Offer to Purchase to the DSBN, which was accepted. JPAS International Inc. ("JPAS") then acquired the lands from the Town in order to develop a school for international students, the purchase included related buildings as well as other related amenities.

JPAS agreed to bear all costs, expenses, fees and taxes of the Town to purchase the lands from DSBN, and pay a Community Contribution payment. In the original agreement, dated June 4, 2019, JPAS also agreed to indemnify the Town with respect to the purchase by the Town from DSBN of the lands and the transfer thereof to JPAS.

JPAS agreed that it will indemnify and save harmless the Town and its agents, contractors, employees and elected officials from and against all manner of actions, causes of actions, suits, claims and demands whatsoever which may arise directly or indirectly by reason of the Agreement or anything done pursuant to this Agreement. The indemnity was prepared by the Town in a form acceptable and was executed by JPAS.

JPAS agreed to pay all expenses incurred by the Town to carry out any study(ies) that the Town, in its sole discretion, determined were required for the purchase of the lands from DSBN including environmental studies. An Environmental Site Assessment was required and conducted.

The Environmental Site Assessment – Phase 1 completed by Soil-Mat Engineers and Consultants Ltd. dated August 27, 2019, consisted of historical records review, interviews and site reconnaissance. The Phase 1 revealed one potentially contaminated activity (PCA) on the property. There was a former building along the north limit fronting on Wintemute Street. The building may have been heated by an oil fired boiler. The Phase 1 also identified 3 areas of concern in the general vicinity: 1) a former railway line adjacent to the southwest property line; 2) an auto repair facility and gasoline service station located approximately 40 metres west from the site; and 3) an auto repair and gasoline service station located approximately 60 metres west from the site. The report notes that the former high school had a small autobody workshop

but did not identify any obvious visual evidence of significant surficial staining on the floor. Based on the findings of the Phase 1 Soil-Mat found the Site contamination to be considered “medium” and recommended completing an ESA Phase 2 in five areas, which was to include bore holes and soil sampling.

JPAS acquired the professional services of Soil-Mat to complete the ESA Phase 2. The Town is now in receipt of the ESA Phase 2, which was completed at a cost of \$25,165.10.

Council authorized the reduction in the contingent liability payment held by the Town as an indemnity as required by the District School Board of Niagara, from \$3,000,000 to \$2,000,000 (reference Administrative Report No. CAO-09-2020 dated May 4, 2020).

Initially, the total funds received from JPAS International Inc. was \$7,000,000, which included the contingent liability funds of \$3,000,000. In reviewing the Land Sale Deposit funds still held by the Town, the following chart provides a balance for each specific expense:

Description of cost, expense, fee, tax and payment	Amount	Funds Used (net rebatable HST)	Balance from \$4,000,000 Land Sale Deposit received
Payment to DSBN (including deposit and land transfer tax)	\$3,465,000.00	\$3,465,000.00	\$535,000
Cost of Studies EA Phase 1 EA Phase 2	\$25,000.00	\$4,579.20 \$22,661.95	\$507,758.85
Registration Fees	\$88.35	\$0.00 (included in legal fees)	\$507,758.85
Legal Fees	\$11,300.00	\$8,221.97 (includes registration fee)	\$495,536.88
Survey Fees	\$5,000.00	\$0.00	\$495,536.88
Appraisal Fee	\$5,033.92	\$4,533.20	\$491,003.68
Community Contribution Payment	\$340,000.00	\$340,000.00 (accounted for)	\$155,003.68

As there will be limited future expenses related to the sale, staff are recommending returning \$135,000.00 of the Land Sale Deposit funds to JPAS. The original agreement states that JPAS will cover all costs regardless of any securities held.

As well, based on the results of the ESA Phase 2, it is staff’s opinion that the contingent liability required initially by the DSBN could now be reduced by a further \$1,000,000, which should be returned to JPAS. The Town has also earned an additional \$38,979 in interest on the funds held, leaving a balance of \$1,038,979 in contingent liability and approximately \$20,000 from the Land Sale Deposit that would still be held by the Town.

JPAS continues to be a good community partner and has proceeded with the development of an international school in good faith. Council is being asked to authorize the return of \$135,000 from the Land Sale Deposit received and \$1,000,000 of the contingent liability funds held. JPAS will be required to execute an Acknowledgement in receipt of the funds.

Financial/Staffing Implications

As noted in the Analysis Section.

Policies Affecting Proposal

By-law No. 68-2019 dated May 13, 2019 authorizes the Entry into and Execution of an Agreement with JPAS International Inc. for the Acquisition of the former Fort Erie Public School and the former Fort Erie High School sites.

Comments from Relevant Departments/Community and Corporate Partners

Not Applicable.

Communicating Results

Not Applicable.

Alternatives

Council may decide not to approve the reimbursement of funds provided by JPAS International Inc. This alternative is not recommended.

Conclusion

The CAO recommends the reimbursement of funds that are no longer required. The Community Benefit of \$340,000 provided to the Town will be used for improvements throughout the community.

The new school continues to provide the Town of Fort Erie with international recognition.

ACKNOWLEDGEMENT

TO: THE CORPORATION OF THE TOWN OF FORT ERIE
RE: Purchase of 7 Tait Avenue, Fort Erie, Ontario (PIN 64228-1042 (LT))
FROM: JPAS INTERNATIONAL INC.

The undersigned, hereby acknowledges that:

- (1) pursuant to an Agreement dated June 4, 2019 the undersigned agreed to purchase from the Corporation of the Town of Fort Erie the lands legally described as being all of PIN 64228-0142 (LT) (hereinafter called the “Agreement”) and in fact the purchase of the said property was completed on June 21, 2019;**
- (2) paragraph 4 (vii) of the said Agreement provided that the undersigned pay to the Corporation of the Town of Fort Erie (hereinafter called the “Town”), inter alia, the sum of Three Million (\$3,000,000.00) Dollars to be held by the Town in order to pay for the contingent liability of the Town under an Offer to the District School Board of Niagara (hereinafter called the “DSBN”) to purchase the lands with an indemnity required by DSBN;**
- (3) paragraph 14 of the said Agreement provided that the undersigned agreed to pay to the Town the sum of Three Million (\$3,000,000.00) Dollars in order to pay for the contingent liability of the Town under the said indemnity required by DSBN and furthermore that in the event that the \$3,000,000.00 was insufficient, the undersigned agreed to pay, on demand, to the Town any additional amounts required to pay for the said contingent liability of the Town to DSBN;**
- (4) paragraph 14 of the said Agreement further provided that the said payment of \$3,000,000.00 would be held by the Town in an interest bearing account established by the Town’s Treasurer until such time as the Town determined in its sole discretion, that it is no longer required;**

(5) paragraph 6 of the said Agreement provided that the undersigned would indemnify and save harmless the Town and its agents, contractors, employees and elected officials from and against all manner of actions, causes of actions, suits, claims and demands whatsoever which may arise directly or indirectly out of the said Agreement or anything done pursuant to the said Agreement and in fact the undersigned provided to the Town an Indemnity Agreement dated June 6, 2019 (hereinafter called the “Indemnity Agreement”) for this purpose;

(6) based upon initial environmental inspection of the property commissioned by the undersigned, the Town released to the undersigned the sum of One Million (\$1,000,000.00) Dollars of the funds held pursuant to Paragraphs 4 and 16 of the said Agreement;

(7) based upon further environmental inspection of the property commissioned by the undersigned, the Town is of the opinion that it would appear that the Town holding One Million (\$1,000,000.00) Dollars in order to pay for the contingent liability of the Town under its indemnity to DSBN is sufficient at this time and the Town is prepared to release to the undersigned at this time the sum of One Million (\$1,000,000.00) Dollars of the funds being held pursuant to Paragraphs 4 and 16 of the said Agreement;

(8) the release to the undersigned of the said One Million (\$1,000,000.00) Dollars does not release the undersigned of an of its obligations and liabilities owed to the Town in respect of the said Agreement and the Indemnity Agreement and that both are still good, valid and enforceable in accordance with their respective terms; and

(9) in consideration of the undersigned providing to the Town this Acknowledgement, the Town is prepared to release to the undersigned One Million (\$1,000,000.00) Dollars of the funds it is presently holding pursuant to the said Agreement.

DATED at _____, this ____ day of July, 2020.

JPAS International Inc.

Per:

Peng Ping Zhao

Xiaojian Liu



The Municipal Corporation of the Town of Fort Erie

By-law No. 73-2020

Being a By-law to Authorize the Entry into a Renewal Agreement with Fort Erie Underwater Recovery Unit Inc. (Kinsmen Pool)

Whereas The Corporation of the Town of Fort Erie is the owner of a public pool facility known as the “Kinsmen Pool”, (the “facility”) located in the Lion’s Sugarbowl Park at 100 Gilmore Road ; and

Whereas at the Council-in-Committee meeting held on April 7, 2015, Council approved Report No. IS-08-2015 and authorized the entry into a Lease and Operating Agreement with the Fort Erie Underwater Recovery Unit Inc. (the “Unit”) for the use and operation of the facility; and

Whereas The Corporation of the Town of Fort Erie entered into a Lease and Operating Agreement with the Fort Erie Underwater Recovery Unit Inc. (the “Lease”) commencing July 1, 2015 for a term of five (5) years, expiring on June 30, 2020; and

Whereas the Unit has requested a renewal of the Lease to commence on July 21, 2020 and end on September 21, 2020; and

Whereas Council authorized a renewal of the Lease by Resolution No. 5A passed at the Council meeting held on July 20, 2020; and

Whereas the parties wish to renew the Lease from July 21, 2020 to September 21, 2020 on the same terms and conditions as set forth in the Lease, save and except any provisions for renewal; and

Whereas it is deemed desirable to enter into a Renewal Agreement with the Unit effective July 21, 2020 to September 21, 2020;

Now therefore the Council of the Town of Fort Erie enacts as follows:

- 1. That** the entry into a Renewal Agreement for the Lease and Operating Agreement with the Fort Erie Underwater Recovery Unit for the use and operation of the facility known as the “Kinsmen Pool” located in the Lion’s Sugarbowl Park at 100 Gilmore Road, effective July 21, 2020 to September 21, 2020, substantially in the form of Schedule “A” attached hereto and forming part of this by-law, is authorized and approved.
- 2. That** the Mayor and Clerk are authorized to execute the Renewal Agreement, and to affix the corporate seal thereto.

Schedule "A" to By-law No. 73-2020

RENEWAL AGREEMENT

THIS AGREEMENT made the _____ day of _____, 2020.

BETWEEN:

THE CORPORATION OF THE TOWN OF FORT ERIE
(hereinafter referred to as the "Town")

and

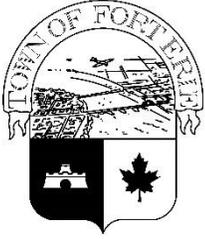
FORT ERIE UNDERWATER RECOVERY UNIT INC.
(hereinafter referred to as the "Unit")

WHEREAS:

1. The parties entered into a Lease and Operating Agreement dated August 14, 2015 (the "Lease"), for the use and operation of the "Kinsmen Pool", located in the Lion's Sugarbowl Park at 100 Gilmore Road, and the exemption of the premises from municipal and school taxes; and
2. The term of the Lease was five (5) years, commencing on July 1, 2015, expiring on June 30, 2020; and
3. The Unit has requested a renewal of the Lease to commence on July 21, 2020 and end on September 21, 2020; and
4. The Town and the Unit wish to renew the Lease from July 21, 2020 to September 21, 2020 on the same terms and conditions as set forth in the Lease, save and except any provisions for renewal; and
5. By-law No. 73-2020 was passed by the Municipal Council of the Town of Fort Erie on July 28, 2020 authorizing the entry into a Renewal Agreement with Fort Erie Underwater Recovery Unit Inc. effective July 21, 2020 to September 21, 2020,

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the mutual covenants and agreements herein and subject to the terms and conditions in this agreement the parties agree as follows:

1. To renew the Lease and Operating Agreement dated August 14, 2015, from July 21, 2020 to September 21, 2020, upon the same terms and conditions as set out therein, save and except any provisions for renewal.
2. This Renewal Agreement may be executed in counterparts and by facsimile or electronic transmission, and when each party has executed a counterpart either



The Municipal Corporation of the Town of Fort Erie

By-law No. 74-2020

Being a By-law to Authorize entry into an Agreement with Her Majesty the Queen in right of Ontario as represented by the Minister of Agriculture, Food and Rural Affairs under the Rural Economic Development (RED) Program

Whereas the Government of Ontario through the Ministry of Agriculture, Food and Rural Affairs created the Rural Economic Development (RED) program to assist with the implementation of Wayfinding signage in communities in the amount of \$111,000; and

Whereas the Town of Fort Erie applied to the Rural Economic Development (RED) program in February 2020 and was approved on May 22, 2020; and

Now therefore the Municipal Council of The Corporation of the Town of Fort Erie enacts as follows:

1. **That** the entry into a Contribution Agreement with Her Majesty the Queen in right of Ontario as represented by the Minister of Agriculture, Food and Rural Affairs under the Rural Economic Development (RED) program, is authorized and approved.
2. **That** the Mayor and Clerk are authorized and directed to execute the said Agreement, in a form satisfactory to the Director, Corporate Services/Treasurer, and to affix the corporate seal thereto.
3. **That** the Clerk of the Town is authorized to effect any minor modifications, corrections or omissions, solely of an administrative, numerical, grammatical, semantical or descriptive nature to this by-law or its schedules after the passage of this by-law.

Read a first, second and third time and finally passed this 28th day of July, 2020.

Mayor

Clerk

I, Carol Schofield, the Clerk, of The Corporation of the Town of Fort Erie certifies the foregoing to be a true copy of By-law No. 74-2020 of the said Town. Given under my hand and the seal of the said Corporation, this _____ day of _____, 20



The Municipal Corporation of the Town of Fort Erie

By-law No. 75-2020

Being a By-law to Confirm the Actions of Council at its Special Council Meeting Held on July 28, 2020

Whereas it is desirable to have the actions and proceedings of Council adopted, ratified and confirmed by by-law;

Now therefore the Municipal Council of The Corporation of the Town of Fort Erie enacts as follows:

1. **That** the actions of Council at its Special Council Meeting Held on July 28, 2020 including all motions, resolutions and other actions are adopted, ratified and confirmed as if they were expressly embodied in this by-law, except where the law requires the prior approval of the Ontario Municipal Board or other authority.
2. **That** where no individual by-law has been or is passed with respect to the taking of any action authorized in or with respect to the exercise of any powers by the Council, then this by-law is deemed for all purposes to be the by-law required for such authorization or exercise of any powers.
3. **That** the Mayor and officers of The Corporation of the Town of Fort Erie are authorized and directed to do all things necessary to give effect to such actions or to obtain approvals where required.
4. **That** except where otherwise provided, the Mayor and the Clerk are authorized and directed to execute all documents arising from such actions.
5. **That** the Clerk of the Town is authorized to effect any minor modifications, corrections or omissions, solely of an administrative, numerical, grammatical, semantical or descriptive nature to this by-law or its schedules after the passage of this by-law.

Read a first, second and third time and finally passed this 28th day of July, 2020.

Mayor

Clerk

I, Carol Schofield, the Clerk, of The Corporation of the Town of Fort Erie certifies the foregoing to be a true copy of By-law No. 75-2020 of the said Town. Given under my hand and the seal of the said Corporation, this day of _____, 20 .