



The Municipal Corporation of the Town of Fort Erie

By-law No. 94-2021

Being a By-law to Authorize the Entry into a Memorandum of Understanding between Hospice Niagara and The Corporation of the Town of Fort Erie (Hospice Expansion)

Whereas Report No. CAO-18-2020 was approved at the Council-in-Committee Meeting of October 5, 2020, to approve an annual grant request in the amount of \$150,000 to be paid over three years, beginning in 2021, for the expansion of residential Hospice in Fort Erie; and

Whereas it is deemed desirable to enter into a Memorandum of Understanding with Hospice Niagara for the expansion of residential Hospice Niagara;

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

1. **That** the entry into a Memorandum of Understanding with Hospice Niagara, for the proposed construction and operation of ten (10) hospice residential beds within the Town of Fort Erie, including location and financial support and the conditions related thereto, in the form of Schedule "A" annexed hereto to this by-law, is authorized and approved.
2. **That** the Mayor and Clerk are authorized and directed to execute the Memorandum of Understanding, in the form of Schedule "A" annexed hereto, and to affix the corporate seal thereto, and all other documentation necessary to effect the terms and conditions of same.
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 23rd day of August, 2021.

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. 94-2021 of the said Town. Given under my hand and the seal of the said Corporation, this _____ day of _____, 20__.

HOSPICE NIAGARA

("Hospice Niagara")

- and -

THE CORPORATION OF THE TOWN OF FORT ERIE

("the Town")

MEMORANDUM OF UNDERSTANDING

WHEREAS Hospice Niagara is desirous of expanding the number of hospice beds within Niagara Region and is working with the Ontario Ministry of Health and other stakeholders for that purpose;

AND WHEREAS the Ministry of Health has approved operational funding for twenty (20) hospice residential beds in Niagara Region, ten (10) of which will be located in the Town of Fort Erie;

AND WHEREAS Hospice Niagara is taking various steps to secure capital funding for the construction of the twenty (20) hospice residential beds in Niagara Region, including the ten (10) beds to be located in the Town of Fort Erie;

AND WHEREAS Hospice Niagara and the Town have engaged in discussions in relation to the proposed construction and operation of ten (10) hospice residential beds within the Town of Fort Erie ("the Hospice Expansion"), including location and financial support;

NOW THEREFORE Hospice Niagara and the Town (each "a party" and collectively "the parties"), in consideration of the promises and covenants contained in this Memorandum of Understanding and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, confirm their mutual understanding of, and agreement to, the following terms:

1. Purpose

- 1.1. This Memorandum of Understanding sets out all rights and responsibilities of Hospice Niagara and the Town in relation to the Hospice Expansion.

2. Term

- 2.1. This Memorandum of Understanding comes into effect on the date it is signed by the parties and will continue for a period of five (5) years from that date unless it is amended or terminated in accordance with section 5.

3. Location of the Hospice Expansion

- 3.1. The Hospice Expansion will be situated on a property municipally known as 200 Garrison Road, which is presently under development by Niagara Region for the purposes of redeveloping the Gilmore Lodge long-term care facility. The parties anticipate that Niagara Region will enter into a lease agreement with Hospice Niagara for a portion of the property for the Hospice Expansion.
- 3.2. For greater certainty, the Hospice Expansion will not be located within and/or form part of Gilmore Lodge but will be a separate construction co-located with the long-term care facility and its associated community program services.

4. Rights and Responsibilities of the Parties

- 4.1. Subject to paragraph 4.4, the Town will contribute to the Hospice Expansion a total sum of one hundred and fifty thousand dollars (\$150,000). Subject to paragraphs 4.2, 4.3 and 4.4, the Town will pay the sum in three (3) installments of fifty thousand dollars (\$50,000) in accordance with the following terms:
 - i. The Town will pay the first installment following confirmation by Hospice Niagara that the planning application for the Hospice Expansion has been approved by the Ministry of Health, which the parties anticipate will occur in or around the spring of 2022. For greater certainty, the Town will pay the first installment no earlier than March 31, 2022.
 - ii. The Town will pay the second installment upon confirmation by Hospice Niagara that a contract for construction of the Hospice Expansion has been awarded, which the parties anticipate will occur no later than the spring of 2023. The Town may request, and is entitled to receive, a copy of the contract prior to advancing the second installment.
 - iii. The Town will pay the third installment upon confirmation by Hospice Niagara of substantial completion of the Hospice Expansion, as documented in and justified by a progress certificate, which the parties anticipate will occur in or around the spring of 2024. The Town may request, and is entitled to receive, a copy of the progress certificate and may take any other steps it deems necessary to verify substantial completion of the Hospice Expansion prior to advancing the third installment.
- 4.2. The parties acknowledge that the anticipated dates set out in paragraph 4.1 are subject to change. The parties acknowledge and agree that if any such change results in more than one installment becoming payable by the Town within the same fiscal year, the Town may, in its sole and absolute discretion, advance a single installment within that fiscal year and delay payment of any further installment(s) such that each installment is paid in a separate fiscal year.

- 4.3. The parties further acknowledge and agree that the Town may delay payment of one or more installments if, in the assessment of the Town acting reasonably, the Hospice Expansion has been unduly delayed and/or will not be completed within the term of this Memorandum of Understanding. The parties further acknowledge and agree that the Town may accelerate the payment of one or more installments where the Town, in its sole and absolute discretion, deems it appropriate to do so.
- 4.4. The parties understand, acknowledge and agree that the Town's commitment to contribute to the Hospice Expansion is contingent upon the construction of ten (10) hospice residential beds in the Town of Fort Erie. If it is determined that the beds will not be constructed in the Town of Fort Erie, then the Town (i) is not required to contribute the sum described in paragraph 4.1; and (ii) is entitled to repayment of any amounts paid prior to being notified that the beds will not be constructed in the Town of Fort Erie.
- 4.5. Hospice Niagara will provide the Town with periodic updates on the progress and status of the Hospice Expansion and will immediately notify the Town if a determination is made that the ten (10) hospice residential beds will not be constructed in the Town of Fort Erie.

5. Amendment and Termination

- 5.1. This Memorandum of Understanding may be amended by mutual agreement of the parties at any time. Any amendments will be made in writing, signed by the parties, and appended to this Memorandum of Understanding.
- 5.2. If a determination is made that the ten (10) hospice residential beds will not be constructed in the Town of Fort Erie, this Memorandum of Understanding will be terminated as of that date, whether or not the determination has been communicated to the Town.
- 5.3. Other than as set out in paragraph 5.2, this Memorandum of Understanding may be terminated for cause only where the cause is a material and significant breach of any provision of this Memorandum of Understanding, in which case it may be terminated on sixty (60) days notice, unless the breach has been remedied or rectified prior to the expiry of the termination period.
- 5.4. This Memorandum of Understanding may also be terminated upon mutual agreement of the parties, which agreement will be made in writing, signed by the parties and appended to this Memorandum of Understanding.
- 5.5. Termination of this Memorandum of Understanding will be without prejudice to the rights of either party against the other that may have accrued up to the date of termination.

6. Dispute Resolution

- 6.1. If a dispute arises as to the interpretation, application and/or execution of this Memorandum of Understanding, including a party's rights and responsibilities and/or an allegation of material and significant breach, the parties will confer in good faith to promptly resolve the dispute.
- 6.2. If the parties are unable to resolve the dispute, the matter shall be mediated and/or arbitrated. If the matter is not resolved through mediation, it will go to and be resolved through binding arbitration. The decision of the arbitrator will be final and binding on the parties.
- 6.3. The parties will each bear their own costs associated with the determination of disputes arising under this Memorandum of Understanding, including but not limited to legal costs and arbitration costs.

7. General

- 7.1. This Memorandum of Understanding constitutes the entire understanding and agreement between the parties relating to the matters set out herein. There are no other representations, covenants or terms relating to the subject matter of this Memorandum of Understanding and this Memorandum of Understanding supersedes any and all prior discussions, understandings or agreements between the parties relating to its subject matter.
- 7.2. Nothing in this Memorandum of Understanding will be deemed to create any partnership, agency or joint venture relationship between Hospice Niagara and the Town.
- 7.3. The invalidity or unenforceability of a particular term of this Memorandum of Understanding will not limit the validity or enforceability of the remaining terms, each of which is distinct and severable from all other terms contained in this Memorandum of Understanding.
- 7.4. This Memorandum of Understanding will be governed by and construed in accordance with the law of the Province of Ontario and the laws of Canada applicable herein.
- 7.5. This Memorandum of Understanding may be signed in counterpart, each of which is an original and all of which together constitute a single document. Counterparts may be executed in original or electronic form and may be exchanged by way of mail or PDF file delivered by email.

EXECUTED as a Memorandum of Understanding this day of, 2021.

HOSPICE NIAGARA

By: _____

Name:

Title:

By: _____

Name:

Title:

I/We have authority to bind the Corporation.

Date: _____

**THE CORPORATION OF THE TOWN OF FORT
ERIE**

By: _____

Name: Wayne H. Redekop

Title: Mayor

By: _____

Name: Carol Schofield

Title: Clerk

We have authority to bind the Corporation.

Date: _____