

Bill No. 192  
2012

By-law No. A.-

A by-law to approve the Amending Agreement to the Agreement between The Corporation of the City of London and Fanshawe College of Applied Arts and Technology and to authorize the Mayor and the City Clerk to execute the Amending Agreement.

WHEREAS subsection 5(3) of the *Municipal Act, 2001* S.O. 2001, c.25, as amended, provides that a municipal power shall be exercised by by-law;

AND WHEREAS section 9 of the *Municipal Act, 2001* provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act;

AND WHEREAS the City and Fanshawe entered into an Agreement, commencing May 11, 2011 to facilitate the development of a Fanshawe College campus in Downtown London (the "Agreement");

AND WHEREAS the Agreement is being amended so that the \$10 million contribution to establish an Arts District in Downtown London is no longer subject to the provision to acquire, restore and renovate properties that qualify as Heritage Properties in the District (the "Heritage Grant");

NOW THEREFORE the Municipal Council of The Corporation of the City of London enacts as follows:

1. The Amending Agreement to the Agreement entered into between The Corporation of the City of London and Fanshawe College of Applied Arts and Technology to facilitate the development of a Fanshawe College campus in Downtown London, attached as Schedule A to this by-law, is hereby authorized and approved.
2. The Mayor and the City Clerk are hereby authorized to execute the Amending Agreement authorized and approved under section 1 of this by-law.
3. This by-law shall come into force and effect on the day it is passed.

PASSED in Open Council on May 1, 2012.

Joe Fontana  
Mayor

Catharine Saunders  
City Clerk

First Reading – May 1, 2012  
Second Reading – May 1, 2012  
Third Reading – May 1, 2012

## SCHEDULE "A"

THIS AGREEMENT MADE AS OF THE 1st DAY OF MAY, 2012

Between:

THE CORPORATION OF THE CITY OF LONDON (the "City")

-and-

THE FANSHAWE COLLEGE OF APPLIED ARTS AND TECHNOLOGY ("Fanshawe")

WHEREAS:

- A. By resolution of Council of the City made October 4, 2011 (the "Resolution"), Council resolved that amendments be made to the agreement between the City and Fanshawe dated May 11, 2011, which agreement provided for grants to be made by the City to Fanshawe for the purposes of establishing an Education and Arts District in downtown London (the "Grant Agreement").
- B. The Grant Agreement provided for a Heritage Grant of up to \$10.0 million and an Economic Development Grant of \$10.0 million.
- C. The City and Fanshawe have determined that current opportunities for purchase of Heritage Property in the District are such that the viability of the Business Plan is diminished without this amendment.
- D. The Economic Development Grant shall be increased to \$20.0 million and the Heritage Grant shall be eliminated.
- E. The City has concluded that the Economic Benefits described in the Grant Agreement are not materially altered by these amendments to the Grant Agreement.
- F. Council has received the report of the Treasurer of the City, pursuant to Regulation 403/02, confirming that the amendments to the Grant Agreement will not cause the City to exceed its Debt and Financial Obligation Limits calculated under that regulation.

**THIS AGREEMENT WITNESSES THAT** in consideration of the mutual covenants contained herein, and other good and valuable consideration, the parties agree as follows:

- 1. The defined terms in the Grant Agreement shall have the same meaning in this agreement, unless otherwise specifically defined in this agreement.
- 2. Fanshawe and the City represent and warrant to the other that the recitals to this agreement are true and correct to the best of their respective beliefs as of the date of the making of this

agreement.

3. The following are the amendments to the Recitals in the Grant Agreement:
  - a. Recitals F and G.a are deleted.
  - b. Recital G.b is amended to refer to an Economic Development Grant of \$20.0 million rather than \$10.0 million.
  - c. Insofar as there are any references to heritage properties in the Business Plan attached as Schedule "B" to the Grant Agreement, those references have no impact on the interpretation of the Grant Agreement, as amended by this agreement.
  
4. The following are the amendments to the body of the Grant Agreement:
  - a. Paragraph 3 is deleted.
  - b. Paragraph 7.a is amended by deleting the phrase "(but save for the Heritage Grant are not restricted to Heritage Properties only)" in subparagraph a. and deleting subparagraph b.
  - c. Paragraph 7 is amended by deleting subparagraph e and substituting the following:

"The cash flow under the Economic Development Grant (excluding the Tax Back Grant) shall be at least \$1.5 million per year during the first four years of the term of this agreement (2011-2014 inclusive). Commencing in the fifth year of the term of this agreement, until the limit of the Economic Development Grant is reached, the City intends to pay at least \$1.5 million per year (excluding the Tax Back Grant), it being agreed that the minimum payment after the first four years of the term of this agreement is subject to annual budget approval or resolution of Council for each consecutive four year term of Council."
  - d. Paragraph 8 is deleted and the following is substituted:

"8. The City shall make the Grants to Fanshawe subject to the terms set out in this agreement, described as follows:

    - a. The Economic Development Grant shall be \$20.0 million, subject to the conditions set out in Schedule "E", which will be used by Fanshawe to assist with the acquisition or Renovations of the Acquired Properties for the School.
    - b. With the agreement of Fanshawe, the City may make any part of the \$20.0 million Economic Development Grant "in-kind" by transfer to Fanshawe of real property, improvements, fixtures and associated personal property at a value to be agreed, in writing, between the City and Fanshawe, prior to the transfer. The \$20.0 million Economic Development Grant shall be reduced by that agreed value.
    - c. The Tax Back Grant shall be calculated at the rate of \$75 per full-time student in attendance at the School in the District, limited to a maximum of 1000 full-time students, being a maximum of \$75,000 per year for a portion of

the payments in lieu of municipal taxes paid by Fanshawe for the term of this agreement.

- e. Paragraph 9 is amended to delete the references to "Heritage Grant".
5. The following are the amendments to the Schedules to the Grant Agreement:
- a. Schedule D relating to Heritage Grants is deleted.
  - b. Schedule E is amended by deleting the phrase "to a maximum of \$10.0 million" and substituting the phrase "shall be \$20.0 million".
6. In all other respects, the parties hereby confirm the terms and conditions contained in the Grant Agreement, save and except as expressly amended by this amending agreement.

**IN WITNESS WHEREOF** the parties have executed this amending agreement by their duly authorized signing officers, as of the above date.

**THE CORPORATION OF THE CITY OF LONDON**

\_\_\_\_\_  
Per: \_\_\_\_\_, Mayor

\_\_\_\_\_  
Per: \_\_\_\_\_, City Clerk

**THE FANSHAWE COLLEGE OF APPLIED ARTS AND TECHNOLOGY**

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

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

We have authority to bind The Fanshawe College of Applied Arts and Technology