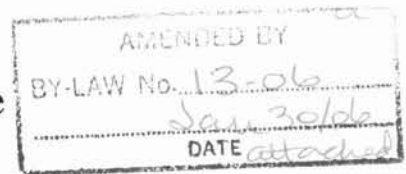




The Municipal Corporation of the Town of Fort Erie

BY-LAW NO. 8-06



BEING A BY-LAW TO APPOINT HARRY SCHLANGE AS CHIEF ADMINISTRATIVE OFFICER FOR THE TOWN OF FORT ERIE AND TO AUTHORIZE THE EXECUTION OF AN EMPLOYMENT AGREEMENT AND TO REPEAL BY-LAW NO. 210-05

WHEREAS Section 227 of the *Municipal Act, 2001* provides it is the role of the officers and employees of a municipality,

- (a) to implement council's decisions and establish administrative practices and procedures to carry out council's decisions;
- (b) to undertake research and provide advice to council on the policies and programs of the municipality; and
- (c) to carry out other duties required under this or any *Act* and other duties assigned by the municipality, and

WHEREAS Section 229 of the *Municipal Act, 2001* provides a municipality may appoint a chief administrative officer who shall be responsible for exercising general control and management of the affairs of the municipality for the purpose of ensuring the efficient and effective operation of the municipality and performing such other duties as are assigned by the municipality, and

WHEREAS as a result of a vacancy, it is deemed desirable to appoint a Chief Administrative Officer for the Town of Fort Erie, and

WHEREAS it is deemed expedient to enter into an Employment Agreement with the Chief Administrative Officer, and

WHEREAS the terms and conditions of the said agreement have now been finalized and agreed upon by the parties in the form of Schedule "A" annexed hereto to this by-law, and


WHEREAS it is deemed desirable for the Council and CAO to enter into a Council-CAO Covenant in the form of Schedule "B" annexed hereto to this by-law;

NOW THEREFORE the Municipal Council of The Corporation of the Town of Fort Erie hereby enacts as follows:


1. **THAT** Harry Schlange be and he is hereby appointed to the position of Chief Administrative Officer for the Town of Fort Erie.
2. **THAT** the entry into an Employment Agreement with Harry Schlange for appointment as Chief Administrative Officer be and it is hereby authorized and approved.
3. **THAT** the Mayor and Clerk be and they are hereby authorized and directed to execute the Employment Agreement with Harry Schlange annexed hereto as Schedule "A" to this by-law and to affix the corporate seal thereto upon execution of the agreement by Harry Schlange.

4. **THAT** the Mayor, on behalf of the Municipal Council of the Town of Fort Erie, be and he is hereby authorized and directed to execute the Council-CAO Covenant with Harry Schlange annexed hereto as Schedule "B" to this by-law upon execution of the Covenant by Harry Schlange.
5. **THAT** Harry Schlange shall complete the declaration of appointed office upon commencement of duties.
6. **THAT** pursuant to the provisions of Section 227 of the *Municipal Act, 2001*, the Clerk of the Town of Fort Erie is hereby authorized to effect any minor modifications or corrections of an administrative, numerical, grammatical, semantical or descriptive nature or kind to the by-law and schedule(s) as may be deemed necessary after the passage of this by-law.
7. **THAT** By-law No. 210-05 be and it is hereby repealed effective February 5, 2006.

READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS 23rd DAY OF JANUARY, 2006.



MAYOR



CLERK

I, Carolyn J. Kett, the Clerk, of The Corporation of the Town of Fort Erie hereby certifies the foregoing to be a true certified copy of By-law No. 8-06 of the said Town. Given under my hand and the seal of the said Corporation this day of _____, 200 .

EMPLOYMENT AGREEMENT

B E T W E E N :

HARRY SCHLANGE
of the City of St. Catharines
(hereinafter referred to as "the Employee")

- and -

THE CORPORATION OF THE TOWN OF FORT ERIE
(hereinafter referred to as "The Corporation")

WHEREAS Section 229 of the Municipal Act, S.O. 2001, c. 25, as amended, provides that the council may by by-law appoint a chief administrative officer, who shall be responsible for exercising control and management of the affairs of the municipality for the purpose of ensuring the efficient and effective operation of the municipality, and for performing other duties as assigned by the municipality;

AND WHEREAS Municipal Council of the Town of Fort Erie (hereinafter called "The Corporation") and the Employee have agreed to enter into an employment agreement;

NOW THEREFORE witnesseth that in consideration of the mutual covenants herein set out, the Employee and The Corporation each hereby agree with the other as follows:

1. ENGAGEMENT

The Corporation hereby engages the Employee and appoints him to the position of Chief Administrative Officer, which engagement and appointment the Employee hereby accepts for the term referred to in Article "3" herein.

2. **DUTIES**

The Employee shall perform such duties as set out;

- (1) In **Appendix "1"** hereto annexed; and
- (2) In any By-law or Job Description as passed or determined by and in the sole discretion of The Corporation subsequent to this Agreement provided that any change to the Employee's duties shall not:
 - (a) diminish his status as a senior manager; or
 - (b) adversely affect his remuneration as provided for herein.

It is understood and agreed between the parties that any duties and responsibilities of the Employee as set forth above shall not be deemed to empower the said Employee to have, perform, do or direct any act or matter that would, to any extent whatsoever, encroach on the enactments or jurisdiction of The Corporation.

3. **TERM OF EMPLOYMENT**

The term of this Agreement and the period of employment of the Employee with The Corporation shall be for a term of four (4) years, commencing February 6, 2006 and ending February 5, 2010, subject to:

- (1) termination and the respective rights and obligations of either party arising out of the termination provisions of this Agreement provided for in Article 4 below; or
- (2) renewal of the agreement by the parties.

4. **TERMINATION, EXPIRY, OR RENEWAL**

- (1) The Employee may terminate the Agreement at any point during the term of the Agreement by giving notice to The Corporation as herein provided at least forty-five (45) days prior to the effective date of the termination.

4. TERMINATION, EXPIRY, OR RENEWAL, continued

- (2) The Employee and The Corporation agree that The Corporation may terminate this Agreement at any point during the term of the Agreement:
- (a) without notice or payment in lieu of notice for just cause, which, for the purpose of this Agreement, shall be defined as any act which, by common law, justifies the summary dismissal of an employee;
 - (b) without just cause,
 - (i) during the first two years of the term by providing advance notice to the Employee of a minimum of nine (9) months prior to the effective date of termination; or
 - (ii) during the last two (2) years of the term by providing advance notice to the Employee of a minimum of twelve (12) months prior to the effective date of termination;
 - (c) However, it is understood that The Corporation, in its sole discretion, may terminate this Agreement with less than the period of notice set out under Articles 4(2)(b)(i) and (ii) and provide severance compensation in lieu of notice or a combination of severance compensation and notice. The severance compensation shall include a continuation of the Employee's prevailing salary and full entitlement to statutory, medical and dental benefits, as well as OMERS contributions subject to OMERS earning eligibility criteria for the period of notice provided for in Articles 4(2)(b)(i) and (ii) above. However, should OMERS participation not be permitted as part of the severance compensation the Employee shall receive payment in lieu of that participation in an amount equal to what would have been The Corporation's contributions to that pension plan.

4. **TERMINATION, EXPIRY, OR RENEWAL, continued**

- (d) Severance compensation does not include Short Term Disability (STD) or Long Term Disability (LTD) coverage. That disability coverage shall cease upon the date of termination.
 - (e) The right of The Corporation to terminate this Agreement as set out herein shall be exercised solely by the Council of The Corporation.
- (3) This Agreement shall expire and terminate at the end of the term provided for in Article 3 above subject to any agreement between the parties to renew. The Corporation shall give the Employee as much notice as is reasonably practical, but no less than 12 months prior to the end of the term of its intention not to renew this Agreement. Failing such notice, this Agreement shall automatically renew for a further term of 4 years (the "renewal term") on the same terms and conditions subject only to the following:
 - (a) the commencement and termination dates shall be adjusted accordingly (February 6, 2010 to February 5, 2014);
 - (b) the advance notice provided for in articles 4(2)(b)(i) and (ii) shall be a minimum of twelve (12) months prior to the effective date of termination;
 - (c) the Employee's annual salary during the renewal term shall be his salary as of February 5, 2010 subject to any further adjustments the Council may deem appropriate, and
 - (d) the Employee's annual vacation with pay during the renewal period shall be five (5) weeks per year.
- (4) Upon termination under Articles 4(2)(a), or (b) or upon the expiry of this Agreement in accordance with Article 4(3), The Corporation shall pay the Employee any accumulated vacation credits and lieu time owing, to which the Employee may be entitled as of the date of termination.

4. **TERMINATION, EXPIRY, OR RENEWAL, continued**

- (5) In the event that the Employee is terminated in accordance with Article 4(2)(b) or upon expiry of this Agreement in accordance with Article 4(3) the Employee shall not be required to mitigate against the severance to which he is entitled by seeking other employment or self-employment nor shall the severance to which he is entitled be reduced or diminished by any income or compensation the Employee may earn or receive as a result of employment elsewhere following termination or the expiry of this Agreement.

5. **COMPENSATION (SALARY)**

- (1) The Employee shall be appointed and paid at the annual salary rate of \$123,000 per year, pro-rated based on a start date of February 6, 2006. Such salary shall be paid to the Employee in accordance with The Corporation's normal payroll practice for Management and Supervisory Staff.
- (2) The Employee's salary shall be adjusted as follows:
- (a) Should the Employee receive a positive evaluation on or about the end of the first ninety (90) days of his employment, he shall receive an increase in the annual salary rate of \$3,000, effective May 1, 2006.
 - (b) Should the Employee receive a positive evaluation on or about the end of the first nine (9) months of his employment, the Employee shall receive an increase in the annual salary rate of \$4,000 per year, effective November 1, 2006, which shall be the rate of compensation during the second year of the term;
 - (c) On November 1, 2007, November 1, 2008 and November 1, 2009 the rate of compensation shall be adjusted three per cent (3%) per year, and such additional amount as Council may deem appropriate subject to a positive performance evaluation of the employee by Council, as stipulated in Article 5.3.

5. **COMPENSATION (SALARY), continued**

- (3) The Council shall evaluate the Employee's performance ending April 30, 2006 and for the period ending October 31 of each year, commencing in 2006, in accordance with **Appendix "2"**, being the Management Performance and Development Evaluation for the Chief Administrative Officer or any other mutually agreed upon evaluation tool.

6. **VACATION**

The Employee shall be entitled to take annual vacation with pay as follows:

- (1) four (4) weeks during each of the first two (2) years of the term; and
- (2) five (5) weeks during each of the last two (2) years of the term

or to such longer term as The Corporation may fix from time to time. The Employee may accumulate or carry forward any unused vacation from year to year. However, his entitlement to cash in lieu of unused vacation credits shall not exceed two (2) weeks per year.

7. **FRINGE BENEFITS**

- (1) The Employee shall be provided with such fringe benefits upon such terms as are provided from time to time by The Corporation as described in Council's Personnel Policy for Management and Supervisory Staff, presently being By-law No. 270-89, as amended. Accordingly, the said benefits shall be immediately available to the Employee upon the commencement of his employment notwithstanding any waiting period that otherwise might be applicable.
- (2) In addition to the Canada Pension Plan, the Employee shall be a participant in the Ontario Municipal Employees Retirement System pension plan. The Corporation and the Employee shall make equal contributions to the plan in accordance with the provisions of the O.M.E.R.S. Rules.

8. MOVING EXPENSES

- (1) The Employee understands The Corporation's desire that the Employee move his residence to Fort Erie and that he continue to reside in Fort Erie during his term of employment with The Corporation.
- (2) In the event the Employee relocates and moves his residence to the Town of Fort Erie within a twenty-four (24) month time period from the date of commencement of his employment with The Corporation, The Corporation shall reimburse the Employee's costs for moving his personal effects (subject to the Employee obtaining three quotations) and legal costs and incidental expenses (such as Land Transfer Tax, survey costs, associated with the purchase of a residence within the community to an upset one-time limit of \$10,000.

9. PROFESSIONAL DEVELOPMENT AND MEMBERSHIP

- (1) The Employee shall be entitled to a program of professional development at the expense of The Corporation, but such program shall be formulated between the Employee and The Corporation with a view to enhancing the value of policy advice to the Council and any expense must conform to the budget and expense reimbursement policies of The Corporation.
- (2) The Employee, in addition to the benefits granted by Article 7 of this Agreement, shall during the term of employment, be reimbursed for all out-of-pocket expenses actually and properly incurred by him in connection with his duties herein, and for all such expenses, he shall furnish statements and vouchers in accordance with the policy applicable to other employees, presently being By-law No. 78-90, as amended.

10. **WORKING TIME**

The Employee covenants and agrees with The Corporation that he will faithfully, honestly, and diligently serve The Corporation and that he will devote his whole time and attention to such employment during working hours and for the purpose of this clause working hours shall be defined as such hours of work as are required to fulfill the duties and responsibilities of the position. Recognizing the Employee's working hours extend beyond the normal workday, the Employee is entitled to time-off in recognition of extra hours worked of seven (7) working days per completed year of service.

11. **CONFIDENTIALITY**

The Employee shall not, during the term of his employment, disclose to any person, firm, or corporation any information concerning the affairs of The Corporation, which the Employee may have acquired in the course of his employment herein, unless such communication or disclosure is approved by The Corporation.

12. **PROVISIONS AGAINST EMPLOYEE'S INTEREST**

The Employee covenants with The Corporation that he has read all of the provisions of this Agreement and thoroughly understands them, especially provisions which may impinge on employment rights he may otherwise have.

13. **INDEPENDENT LEGAL ADVICE**

The Employee acknowledges that The Corporation has advised him that he is entitled to receive independent legal advice prior to his execution of this Agreement and the Employee expressly acknowledges his right so to do.

14. TERMINATION OF AGREEMENT ON DEATH

If the Employee dies during the term of this Agreement, this Agreement shall be terminated as of the date of such death. Payment of any fringe benefits or wages owed to the Employee at the time of death shall be paid by The Corporation to such person or entity as may be directed in writing by the Employee from time to time, failing such designation then to the Employee's legal representative.

15. ENTIRE AGREEMENT

The Employee acknowledges that he has accepted this position through his own free will and has not relied on any representations with respect to security of employment or the future prospects of The Corporation. The Employee confirms that the terms of this Agreement are the only terms that he is relying upon with respect to this employment opportunity and that he does not and will not rely on any other written or oral representations, expressed or implied, in relation to the employment opportunity to make any claims regarding the reasons for his acceptance of this employment opportunity or any other matter related thereto.

16. ARBITRATION

- (1) Any dispute between the parties, whether arising during the period of this Agreement or at any time thereafter which relates to the validity, construction, meaning, performance or effect of this Agreement or the rights, duties, obligations and liabilities of the parties shall be subject to arbitration pursuant to the *Arbitrations Act, 1991* (Ontario) (the "Act") as it may be amended from time to time and shall not be the subject of any court action.
- (2) The party desiring arbitration shall nominate a single arbitrator to hear the arbitration and provide notice to the other party. Such notice shall provide a brief description of the matter submitted for arbitration. If the parties are unable to agree upon the arbitrator within ten (10) days of the delivery of the notice either party may apply to a court to have an arbitrator appointed under the Act.

16. ARBITRATION, continued

- (3) The arbitration shall take place in the Town of Fort Erie or any other location by mutual agreement. The decision of the arbitrator shall be binding upon the parties in respect of the procedure during the arbitration proceeding and the final determination of the issues.

17. AGREEMENT NOT ASSIGNABLE

This Agreement, being a contract for personal services, shall not be assignable by either party.

18. TYPE AND STYLE OF NOTICES

All notices to be given under this Agreement shall be in writing and shall be given in person or by registered mail. Service on The Corporation shall be effective if served personally on the Mayor or the Clerk thereof. Service by mail shall be effective addressed as follows:

Harry Schlange
67 Simpson Road
St Catharines, Ontario
L2M 3Z5

The Corporation of the Town of Fort Erie
1 Municipal Centre Drive
Fort Erie, Ontario
L2A 2S6

or to such other address as may be furnished in writing by such party to the other.

19. APPLICABLE LAW

This Agreement shall be construed in accordance with the laws of the Province of Ontario.

20. TIME OF THE ESSENCE

Time shall be of the essence of this Agreement and of every part thereof.

21. BINDING ON SUCCESSORS

This Agreement shall enure to the benefit of and be binding on the parties hereto and their respective heirs, executors, administrators, successors, and assigns unless otherwise provided in this Agreement.

22. SEVERABILITY

In the event that any provision of this Agreement is found to be void or unenforceable, such finding shall not affect the other provisions, which will continue to be in full force and effect.

IN WITNESS WHEREOF the Employee has hereunto set his hand and seal, and The Corporation has hereunto affixed its Corporate Seal, attested by the hands of its duly authorized officers, on the dates indicated below.

SIGNED, SEALED AND DELIVERED)	
In the presence of)	
)	
)	
_____)	_____
Witness to the signature of)	HARRY SCHLANGE
Harry Schlange)	
)	
DATE: _____)	
)	
)	THE CORPORATION OF THE
)	TOWN OF FORT ERIE:
)	
)	
DATE: _____)	_____
)	Mayor
)	
)	_____
)	Clerk