

THE CORPORATION OF THE MUNICIPALITY OF HASTINGS HIGHLANDS

BY-LAW #2015-050

Being a By-law to Authorize Execution of a Service Contract Agreement between the Corporation of the Municipality of Hastings Highlands and Fire Marque Inc. to act as an agent in filing claims to recover costs and expenses incurred by the Fire Department as a result of attending incident sites.

WHEREAS the Municipal Act, 2001, Section 8 provides for powers of a municipality to be interpreted broadly so as to confer broad authority on the municipality to enable the Municipality to govern its affairs as it considers appropriate and to enhance the municipality's ability to respond to municipal issues;

AND WHEREAS the Municipal Act, 2001, Section 9 provides in part that a Municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority;


AND WHEREAS the Municipal Act, 2001, Section 11 authorizes a Municipality to pass By-laws, respecting the governance structure of the municipality and its local boards and By-laws respecting accountability and transparency of the municipality and its operations of its local boards and their operations.

NOW THEREFORE THE MUNICIPAL COUNCIL OF THE CORPORATION OF THE MUNICIPALITY OF HASTINGS HIGHLANDS ENACTS AS FOLLOWS:


1. **THAT** the Mayor and Municipal Clerk are hereby authorized to execute on behalf of the Corporation a Service Contract Agreement with Fire Marque Inc. to act as an agent for the Municipality in filing claims to recover costs and expenses incurred by the Fire Department as a result of attending incident sites with the terms and conditions as set out in Appendix "A" attached hereto and comprising part of this By-law.
2. **THAT** Mayor and Clerk be and are hereby authorized to sign this By-Law and affix the corporate seal thereto.
3. **THAT** this By-Law is enacted upon the third and final reading hereof.

Read a first, second and third time, and be finally passed, signed, sealed and numbered By-Law 2015-050, this the 3rd day of June, 2015.





Vivian Bloom, Mayor



Robyn Rogers, Clerk



This Agreement made the 3rd day of June 2015.

AGENCY AGREEMENT

(Herein after referred to as the 'Agreement')

The Agreement made

BETWEEN:

FIRE MARQUE INC.
(herein after referred to as the "Agent")

AND

The Corporation of the Municipality of Hastings Highlands
(Herein after referred to as the "Municipality")

WHEREAS the Municipality Fire Department attends, when required, at incident sites to provide emergency services;

AND WHEREAS the costs and expenses incurred by the Municipality Fire Department as a result of attending at the Incident Sites and providing services may be recoverable through Indemnification Technology® with respect to insured perils through the insurance policies of the owner or tenant of the Incident Site;

AND WHEREAS the Municipality wishes to appoint the Agent, as its agent for the purpose of filing claims ("Claims") on behalf of the Municipality and to recover, on their behalf, any insurance proceeds from the insurers of the affected parties which are recoverable in accordance with the terms of any policy agreement for the costs and expenses incurred by the Fire Department as a result of attending at the Incident Sites.

AND WHEREAS the Agent wishes to make the Claims and recover the recoverable proceeds of insurance on behalf of the Municipality in accordance with the terms and conditions set forth herein;

NOW THEREFORE, in consideration of the mutual terms and covenants herein contained, the Parties covenant and agree as follows:

1. DEFINITIONS

- (a) "**Agreement**" is the mutual understanding with respect to the rights, duties and obligations with one another;
- (b) "**Agency Fee**" is the financial compensation expressed as a percentage of the recovered Emergency Cost Recovery Proceeds excluding taxes;
- (c) "**Agency Fee Taxes**" are the HST or GST, and any other value added taxes as defined under the Tax Act;
- (d) "**Agent**" is Fire Marque Inc.;
- (e) "**Claims**" an amount requested for payment for an insured loss which falls under the terms of an insurance contract;
- (f) "**Emergency Cost Recovery Proceeds**" are the funds recovered by the Agent as a result of filing claims with insurers pursuant to the Insurance Policies of the owner or tenant of an Incident Site to recover the costs and expenses incurred by the Municipality Fire Department as result of attending and providing emergency services at an Incident site;

- (g) **"Fire Department"** means a group of firefighters authorized to provide fire protection Services by the
- (h) **"Incident Reports"** are the property statistical fire reports also called Standard Incident Reports;
- (i) **"Incident Sites"** is the municipal address or property location of the incident which is attended at by the Municipality's Fire Department in relation to which the Municipality's Fire Department incurs costs and expenses as a result of providing their emergency services;
- (j) **"Indemnification Technology®"** is the intellectual property owned and employed by the agent in making claims to recover costs and expenses of the Municipality's Fire Department incurred as result of providing emergency services at an Incident site and includes: incident reporting, data collection, and property insurance policy wording interpretation to maximize billing opportunities on behalf of the Fire Department by invoicing insurance companies for the costs of fire department attendance with respect to insured perils.
- (k) **"Indemnities"** means the Agent, its directors, partners, officers, agents, and employees and the Municipality, Party or Parties its employees, servants, agents, subcontractors or volunteers.
- (l) **"Initial Term"** A time commitment from the signing of this agreement.
- (m) **"Insurers"** as defined in the insurance act.
- (n) **"Insurance Policies"** is a system under which individuals, businesses and other entities, in exchange for a sum of money called the premium are guaranteed compensation for losses resulting from certain perils under specific conditions.
- (o) **"Intellectual Property"** is a distinct type of creation for which a set of exclusive rights are recognized, these rights include copyrights, trademarks, patents and trade secrets.
- (p) **"Losses"** are the basis for a claim for indemnity under the terms of an insurance policy.
- (q) **"Party"** or **"Parties"** is the Agent and the "Municipality".
- (r) **"Municipality"** is the municipality entering into the agreement.
- (s) **"Renewal Term"** a three year time commitment after the initial term.
- (t) **"Term"** is the Initial Term together with any subsequent Renewal Term;
- (u) **"Termination Date"** is the date the agreement ends.
- (v) **"Third Party Fire Departments"** is a fire department, fire brigade, persons and/or equipment that are not part of the Municipality Fire Department.

2. TERM

The term of this Agreement will begin as of the date hereof and continue for a period of five years (the "Initial Term"). Until terminated in accordance with Section 14, this Agreement will automatically renew for successive three years (each a "Renewal Term") upon the expiry of the Initial Term or any preceding renewal period (the Initial Term and any subsequent Renewal Terms are hereinafter collectively referred to as the "Term").

3. APPOINTMENT

The Municipality hereby appoints the Agent as its exclusive agent during the Term of this Agreement for the purpose of filing, on behalf of the Municipality, all claims with insurers and to recover from any insurers on their behalf, any proceeds of insurance which are recoverable in accordance with the terms of any policy agreement of an owner or the tenant at any Incident Site.

4. AGENT OBLIGATIONS

During the term of the Agreement, the Agent agrees:

- (a) To proceed diligently to prepare and file claims with the insurer of the incident sites on behalf of the Municipality upon receipt of the Incident Reports from the Municipality's Fire Department;
- (b) To establish and maintain an interest bearing trust account to receive and hold any actually recovered proceeds of insurance (the "Emergency Cost Recovery Proceeds") in trust on behalf of the Municipality (which proceeds may be comingled with the proceeds recovered for other municipalities and/or fire departments, for which Agent is providing similar services);
- (c) To remit on a quarterly basis or such period as agreed to between the Agent and the Municipality, the Emergency Cost Recovery Proceeds to the Municipality, less any Agency Fee, and Agency Fee Taxes deducted in accordance with Sections 6 and 7.
- (d) To deliver a statement to the Municipality providing reasonable details in regards to the amounts being remitted for the applicable period; and
- (e) To maintain complete, detailed and adequate books and records pertaining to claims and Emergency Cost Recovery Proceeds.

5. MUNICIPALITY'S OBLIGATIONS

During the Term of the Agreement, the Municipality agrees:

- (a) on a monthly basis or such period as agreed to between the Municipality and Agent, to provide the Agent with all the completed Standard Incident Reports relating to its attendance at all Incident Sites during the period, setting forth in reasonable detail the services provided and the costs and expenses incurred by the Municipal Fire Department in attending such Incident Sites and providing information as to the applicable insured, the insurance company and the policy number of the Incident Site, if available;
- (b) In accordance with the insurance policies ensure that the Emergency Cost Recovery Proceeds that are remitted to the Fire Department are used by the Fire Department for its own purposes, which purposes may include but not be limited to the following:
 - (i) the purchase of equipment for the Fire Department; and/or
 - (ii) the provisions of training and education to the firefighters of the Fire Department; and/or
 - (iii) the purchase and/or provision of materials and equipment for fire inspection, fire prevention and public education programs and
- (c) If requested to provide the Agent with documentation evidencing that the Municipal Fire Department is the sole beneficiary of any Emergency Cost Recovery Proceeds that have been remitted to the Municipality in accordance with Section 4.

6. AGENCY FEE

In consideration for the services provided by the Agent pursuant to the agreement, during the Initial Term, the Agent will be entitled to a fee equal to thirty (30%) of all Emergency Cost Recovery Proceeds (the "Agency Fee"). The Agent will be entitled,

on a monthly basis, to invoice the Municipality for the Agency Fee accrued in respect of the previous month Emergency Cost Recovery Proceeds and to deduct the Agency Fee from the Emergency Cost Recovery Proceeds. The Agent shall not be entitled to any further consideration from the Municipality or the Municipality Fire Department. The amount of the Agency Fee shall be negotiated by the Parties for any Renewal Terms.

7. TAXES

It is understood by the parties that the Agency Fee is exclusive of all taxes, duties and other charges (including any GST, HST or other value added taxes), ("Agency Fee Taxes"), applicable to the services provided by the Agent hereunder. The Agent shall withhold and deduct from the Emergency Cost Recovery Proceeds that are to be remitted to the Municipality's Fire Department, any Agency Fee Taxes, and all such Agency Fee Taxes will be remitted to the applicable government agency, as and when required.

8. INTELLECTUAL PROPERTY

The Municipality agrees and acknowledges that any intellectual property of the Agent, including but not limited to any software, trade-names, trade-marks, and copyrighted materials and any of the foregoing as it relates to Indemnification Technology® are the property of the Agent, and the Municipality has no rights to this Intellectual Property as a result of this agreement or otherwise.

9. AUDIT

The Municipality has the right to audit, at its own expense, the records and accounts, during reasonable business hours and on advance written notice to the Agent; and, for up to twenty-four (24) Months from the end of the calendar year to which the records and accounts relate.

10. UNRECOVERABLE EXPENSES

No action will be undertaken by Fire Marque Inc. to collect any proceeds or file any claims on behalf of the Municipality. The Fire Department will only be entitled to receive Emergency Cost Recovery Proceeds actually recovered by Fire Marque Inc. on behalf of the Municipality. The Municipality, at its own discretion, may elect to enforce the payment of the Emergency Cost Recovery Proceeds not recovered by Fire Marque through powers granted by their By-Laws or through litigation.

11. INCIDENTS ATTENDED TO BY OTHERS

It is acknowledged by the Parties that in certain instances, in addition to the Municipality Fire Department, other fire departments or other emergency personnel ("Third Party Fire Departments") may attend at an Incident Site and whose costs and expenses incurred as result of attending and providing emergency services at such Incident Site may also be recoverable under the Insurance Policies of the owner(s) or tenant(s) of such Incident Site. In such cases:

- (a) the Municipality acknowledges that the Emergency Cost Recovery Proceeds recovered in respect of such Incident Site may have to be shared with the Third Party Fire Departments, and Agent makes no representation and will not be required take any action to determine the appropriate allocation of such Emergency Cost Recovery Proceeds

between the Municipality Fire Department and the Third Party Fire Departments.

- (b) the Municipality shall negotiate an appropriate allocation of the Emergency Cost Recovery Proceeds with the Third Party Fire Departments. If the Municipality and the Third Party Fire Departments are unable to agree to an appropriate allocation within a reasonable time, then Agent may, in its sole discretion but without obligation to do so, and on notice to Municipality, commence interpleader or a similar action or proceeding in connection with any dispute in relation to allocation of the Emergency Cost Recovery Proceeds and pay the Emergency Cost Recovery Proceeds into court, whereupon the Agent shall be released from any further obligations in respect of such Emergency Cost Recovery Proceeds and the Municipality shall indemnify and hold harmless the Agent from any dispute arising with respect to such Emergency Cost Recovery Proceeds whether the Agent is acting as agent on behalf of the Third Party Fire Departments to the dispute or otherwise.

12. LIMIT ON LIABILITY

Other than Emergency Cost Recovery Proceeds actually recovered, the Agent will not be liable to the Municipality for any costs and expenses incurred as a result of the Municipality Fire Department attending and providing emergency services at an Incident Site which it was unable to recover through the insurance policy of the owner or tenant of such services

13. INDEMNIFICATION

The Municipality and the Agent agree to indemnify and save harmless each other from and against any loss, damage, claim, demand, cost, action, suit, expense or liability whatsoever whether in respect to losses suffered by a Party or in respect to claims by third parties that arise out of, or are attributed in any respect to, their involvement as Parties to this Agreement, that the other may incur, suffer or be required to pay pursuant to any claim, demand, action, suit, litigation, charge, complaint, prosecution or other proceeding that may be made or asserted against or affect the party indemnified by reason of wrongful or negligent act or omission on the part of the indemnifying party, its employees, servants, agents, subcontractors or volunteers in the performance or rendering services. The obligation of either party to indemnify as set forth in this paragraph shall survive the termination of this Agreement for any reason.

14. TERMINATION

Notwithstanding Section 2, this Agreement will terminate with 30 days' written notice by either Party, provided that if this Agreement is terminated (other than as a result of a material breach of this Agreement by the Agent), the Agent shall be entitled to continue filing all Claims and collecting Emergency Cost Recovery Proceeds, for any incidents attended to by the Municipality Fire Department at Incident Sites which occurred prior to the date of the termination date of this Agreement, and such filings and recoveries shall remain subject to the terms and conditions of this Agreement. The Municipality or the Municipality Fire Department shall not make claims in respect of any incidents attended to by the Municipal Fire Department which occurred prior to the effective date of termination. The covenants set forth in this Section 14 shall survive the termination of this Agreement.

15. NOTICES

All notices, communications, statements and payments which may be required or permitted under this Agreement will be in writing and sent by registered mail, courier services, or transmitted by facsimile or other electronic means which produces a physical copy. Any party may change its address by notice to the other parties.

The addresses of the parties pursuant to this Section 15 are as follows:

if to the Municipality,
Municipality of Hastings Highlands
33011 Hwy 62
P.O. Box 130
Maynooth, ON K0L 1S0
Attention: Robyn Rogers, Clerk

if to the Agent
Fire Marque Inc.,
P.O. Box 2018, Thornton, ON L0L 2N0
Phone: 1-855-424-5991 or 705-424-5991
Fax: 705-424-5702
Attention: Ted K. Woods

16. SEVERABILITY

If any provision of this Agreement is determined to be illegal, invalid or unenforceable by an arbitrator or any court of competent jurisdiction from which no appeal exists or is taken, that provision will be severed from this Agreement and the remaining provisions will remain in full force and effect.

17. ARBITRATION

All disputes, controversies and disagreements with respect to this Agreement, or any matter arising under or in connection with this Agreement, shall be finally settled by arbitration. Arbitration shall be conducted as follows:

- (a) the reference shall be to a single arbitrator appointed in accordance with the *Arbitration Act, 1991*, S.O. 1991, C. 17 as amended;
- (b) the decision of the arbitrator shall be final, conclusive and binding upon all parties;
- (c) unless otherwise determined by the arbitrator, the Parties shall pay an equal portion of the fees and expenses of the arbitrator; and
- (d) the *Arbitration Act, 1991*, S.O. 1991, C. 17 shall apply to and govern each such reference to arbitration; and
- (e) All arbitrations shall be conducted in Barrie, Ontario

18. GOVERNING LAW

This Agreement is governed by, interpreted and enforced in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable in the province. Subject to Section 17, each of the Parties irrevocably attorns to the exclusive jurisdiction of the Courts of Ontario.

19. WAIVER

No waiver of any provision of this Agreement constitutes a waiver of any other provision.

20. ENTIRE AGREEMENT

Except as stated herein, this Agreement constitutes the entire agreement between the Parties concerning the subject matter hereof and, during the term hereof, supersedes all prior written or verbal agreements concerning such subject matter.

21. AMENDMENTS

Amendments to this agreement shall be in writing and be executed by the Parties. If agreed in writing by both Parties to this agreement an amendment shall form a part of this agreement.

22. ASSIGNMENT

Neither this Agreement nor any of the rights or obligations under this Agreement are assignable or transferable by a Party without the prior written consent of the other Party, provided that nothing herein shall prevent The Agent from assigning this Agreement or any of its rights or obligations to an affiliate of The Agent, provided that the Agent agrees to remain liable to the Municipality for the obligations of such transferee affiliate.

23. ENUREMENT

This Agreement shall be binding upon and enure to the benefit of the Parties and their respective successors.

24. COUNTERPARTS

This Agreement may be executed and delivered in any number of counterparts (including by facsimile or other electronic transmission) and all counterparts taken together constitute one and the same instrument.

25. LEGAL RELATIONSHIP

In this Agreement nothing gives rise to an employment relationship for the provision of services between the Municipality and Agent. The Parties expressly acknowledge that they are independent and neither an employer-employee relationship is intended or created by this Agreement.

26. COLLECTION AND DISCLOSURE OF PRIVATE INFORMATION

Any information collected by the Agent and Principal pursuant to this Agreement is subject to, and shall be handled in accordance with, the provisions of *the Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56 as amended and the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended.

27. LAWS

The Municipality and Agent, its employees and representatives, if any shall at all times comply with any and all applicable federal, provincial and municipal laws, ordinances, statues, rules, regulations and orders in respect of the performance of this Agreement.

28. CONFIDENTIALITY

The Agent shall hold confidential and not disclose or release to any person other than the Agent and Principal at any time during or following the term of this Agreement, except where required pursuant to the provisions of the *Municipal Freedom of information and Protection of Privacy Act* and/or the *Personal Information Protection & Electronic Documents Act (PIPEDA)*, any information or document that identifies any individual or the nature and extent of services received by any individual without obtaining written consent of the Municipality prior to the release or disclosure of such confidential information

29. CONFLICT OF INTEREST

The Agent shall disclose to the Municipality without delay any actual or potential situation that may be reasonably interpreted as either a conflict of interest or a potential conflict of interest, or breach of law in relation to this Agreement. A breach of this section by the Agent shall entitle the Principal to terminate this Agreement in addition to any other remedies that the municipality may have in law or equity.

IN WITNESS WHEREOF the parties have executed this Agreement as of the date first above written.

MUNICIPALITY OF HASTINGS HIGHLANDS

FIRE MARQUE INC.



Vivian Bloom, Mayor

Ted K. Woods, President



Robyn Rogers, Municipal Clerk

Witness