



TOWN OF NEWMARKET
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905.895.5193

December 3, 2015

**JOINT CAO/COMMISSIONER/LEGAL SERVICES
REPORT – 2015-10**

TO: Mayor Van Bynen and Members of Council
SUBJECT: Central York Fire Services – Consolidated Fire Services Agreement
ORIGIN: Commissioner, Corporate Services

RECOMMENDATION:

THAT Joint CAO/Commissioner/Legal Services Report – 2015-10 dated December 3, 2015 regarding Central York Fire Services – Consolidated Fire Services Agreement be received.

BACKGROUND

At the Special Committee of the Whole meeting on November 16, 2015 staff was asked to report on Central York Fire Services (CYFS) governance structure in relation to approvals for budget and property matters.

Members of Council may recall that Newmarket and Aurora consolidated their fire and emergency services into one department effective January 1, 2002. That consolidation was formalized through a Consolidated Fire and Emergency Services Agreement (the “Agreement”), signed by the Towns of Aurora and Newmarket on November 1, 2001 (By-law 2001-146). Since 2001, the Agreement has been amended twice – once in 2007 related to Chair/Vice Chair term and the other in 2010 related to limiting individual membership. The original Agreement and Schedule A (Committee terms of reference) is attached as Appendix 1. The full Agreement is available upon request.

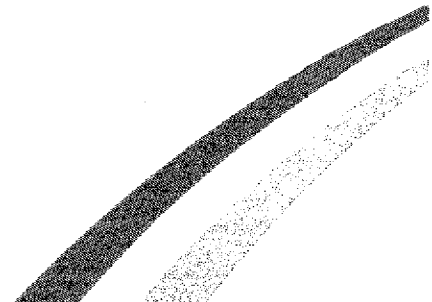
Governance

Joint Council Committee

The Agreement sets out a number of governance provisions such as the establishment, role and powers of a Joint Council Committee, membership and procedures regarding budget approval and property matters.

The Joint Council Committee (“JCC”) is comprised of 6 Members - 3 Newmarket Council Members and 3 Aurora Council members. The terms of those members are concurrent with the term of the Councils which appointed them. The Committee makes recommendations to the Councils of both Towns relating to service standards, namely:

- the Master Fire plan;
- annual capital and operating budgets;
- labour contracts;



- fire communication services and mutual aid agreements and
- purchases or contracts related to fire services

As the employer for all CYFS employees, the Town of Newmarket is responsible for all negotiations and agreements relating to any labour relations contracts.

Service Levels

The Master Fire Plan (the “Plan”) establishes the level of service, subject to any mutually agreed upon amendment of the Plan, with each municipality committing funding and capital resources through annual budgets to provide the agreed upon level of service. Section 5.3 of the Agreement provides that it is the Committee who is responsible to provide fire protection and prevention services in accordance with the Plan and it would appear that if the two municipalities couldn’t come to a resolution on the level of service to be provided, the dispute resolution process would apply.

Budget

The annual budget as presented by JCC is to be submitted to the Council of the Town of Aurora for comment and then to the Council of Newmarket for consideration and approval. Newmarket has the sole authority to determine and approve the proposed annual budgets. In practice however, the budget has been a consultative process working well as a result of open and ongoing dialogue between JCC and the Towns.

Resolution of Disputes

The Agreement under Section 11 provides a dispute resolution procedure relating to a variety of matters contained in the Agreement. This provision has not been used by either Newmarket or Aurora since the consolidated department was formed. However should there be a dispute, the agreement provides for a stepped process leading up to if necessary, a binding arbitration.

Property

Section 7 of the Agreement sets out provisions related to property. Each municipality’s capital property used for fire services, including land, vehicles and equipment is shared and used by the consolidated department. A cost sharing arrangement sets out the required contributions of each municipality towards the acquisition and maintenance of capital property, equipment, supplies and staffing. Newmarket is responsible for coordinating the purchase of all new equipment, materials and services for the consolidated department in accordance with the Town’s Procurement By-law.

Guided by the Plan and on the recommendation of JCC, each municipality undertakes appropriate arrangements to secure land for CYFS facilities. In line with the governance structure set out in the Agreement, should a Council wish to provide input on land acquisitions undertaken by the other municipality for CYFS facilities, it should be made through the respective municipality’s JCC members.

Legal title to real property that was owned by the respective Towns prior to the Agreement’s effective date remains with the municipality in which the property is located.

The Agreement further sets out that all real property acquired and any buildings erected on that land after January 1, 2002, shall be owned jointly or owned and/or constructed as determined by the Towns. If the Towns cannot come to a determination, then it shall be paid for on an equal basis. In practice,

discussions on property matters have occurred between the two municipalities in a very consultative manner.

With respect to funding of the newest CYFS fire hall - Fire Station 4-4 (Fred Bolsby Fire Hall) - the Agreement had identified that where one party's contribution to capital property was less than the other, it would make that capital contribution at some point during the first term of the Agreement. This was the case with the new hall in Aurora which was funded solely by Aurora.

BUSINESS PLAN AND STRATEGIC PLAN LINKAGES

This report links to Newmarket's key strategic directions in being Well Equipped and Managed by implementing policies and processes that reflect sound and accountable governance.

CONSULTATION

Consultation has taken place with the Fire Chief and Legislative Services and Finance departments.

HUMAN RESOURCE CONSIDERATIONS

None.

BUDGET IMPACT

Operating Budget (Current and Future)

None.

Capital Budget

None

CONTACT

For more information on this report, contact Esther Armchuk, Director, Legal Services at 905-955-5300, ext. 2432.



Director, Legal Services



Commissioner, Corporate Services



Chief Administrative Officer

Appendix I

CORPORATION OF THE TOWN OF NEWMARKET

BY-LAW NUMBER 2001-147

BEING A BY-LAW TO REGULATE THE PROVISION OF FIRE AND EMERGENCY SERVICES, AND TO ESTABLISH A CONSOLIDATED FIRE AND EMERGENCY SERVICES DEPARTMENT.
(Establishment of the Consolidated Aurora and Newmarket Fire Department)

WHEREAS Section 210, Paragraph 31 of the *Municipal Act, R.S.O. 1990, c.M.45*, provides that the Council of a municipality may, by by-law, provide fire-fighting and fire protection services for establishing, operating, promoting and regulating life and property saving companies;

AND WHEREAS Section 210(47) provides that Council may pass by-laws for the purpose of suppressing fires and demolishing structures for the prevention of the spread of fires;

AND WHEREAS the *Fire Protection and Prevention Act* authorizes municipalities to enter into joint agreements for the provision of fire protection and prevention services;

AND WHEREAS The Town of Newmarket and the Town of Aurora have approved the establishment of a consolidated Fire and Emergency Services Department to service both municipalities;


BE IT THEREFORE ENACTED by the Municipal Council of the Town of Newmarket as follows:

1. THAT effective January 1, 2002 a service for the Town of Newmarket is hereby established whose purpose shall be to provide fire suppression, fire prevention, and life and property saving service for the Town of Aurora and the Town of Newmarket; in accordance with the Fire and Emergency Services Master Fire Plan and other plans, policies or directions, as approved by Council;
2. AND THAT the Service will be known by such name as the Municipal Councils may decide from time to time;
3. THAT By-law 1977-52 being a by-law to establish the Town of Newmarket Fire Department, and any other by-law inconsistent with this by-law shall be, and the same is hereby rescinded on January 1, 2002 at 12:01 a.m.
4. THAT the provisions of this by-law shall come into force and effect 12:01 a.m. on January 1, 2002.

ENACTED THIS 26TH DAY OF NOVEMBER 2001.



Tom Taylor, Mayor



Nancy Wright-Laking, Town Clerk

CORPORATION OF THE TOWN OF NEWMARKET

BY-LAW NUMBER 2001-146

A BY-LAW TO APPROVE AN AGREEMENT BETWEEN THE CORPORATION OF THE TOWN OF NEWMARKET AND THE CORPORATION OF TOWN OF AURORA.
(Agreement for the Consolidated Fire Services Department)

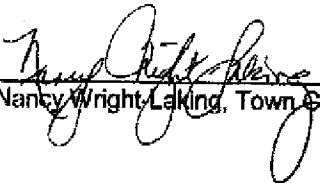
WHEREAS the Corporation of the Town of Newmarket and the Corporation of the Town of Aurora have agreed to the establishment of a Consolidated Fire and Emergency Service Department:

BE IT THEREFORE ENACTED by the Municipal Council of the Corporation of the Town of Newmarket as follows:

1. THAT the agreement between the Corporation of the Town of Newmarket and the Corporation of Town Of Aurora dated 1st day of November 2001, a true copy of which is attached hereto, be and the same is hereby approved.
2. THAT the Mayor and Clerk are hereby authorized and instructed to sign the same on behalf of the Corporation and to affix the Corporate Seal thereto.

ENACTED THIS 26TH DAY OF NOVEMBER, 2001.


Tom Taylor, Mayor


Nancy Wright-Laking, Town Clerk

CONSOLIDATED FIRE AND EMERGENCY SERVICES AGREEMENT

This Agreement made the 1st day of November, 2001

B E T W E E N :

THE CORPORATION OF THE TOWN OF AURORA
(hereinafter called "Aurora")

BEING THE PARTY OF THE FIRST PART

-and-

CORPORATION OF THE TOWN OF NEWMARKET
(hereinafter called "Newmarket")

BEING THE PARTY OF THE SECOND PART

WHEREAS Section 5(1) of the Fire Protection and Prevention Act, 1997 (S.O. 1997, c. 21, Sch. A, s.3, as amended) (the "Act") provides that a fire department may provide fire suppression services and other fire protection services to a group of municipalities;

AND WHEREAS Section 6(1) of the Act requires the councils of the municipalities operating a Fire Department to appoint a fire chief for the fire department;

NOW THEREFORE in consideration of the premises, mutual covenants and conditions herein contained, the Parties hereto AGREE AS FOLLOWS:

Definitions

"Committee" means the Consolidated Fire and Emergency Services Committee, or such other name for the Committee as the Municipal Councils may decide from time to time, which is a joint committee of the Municipal Councils of Aurora and Newmarket, established by by-law.

"Chief" means the Head of the Department, as jointly appointed by by-laws of the Municipal Councils of both Aurora and Newmarket who shall also serve as the Fire Chief to both of the Towns of Aurora and Newmarket, having all of the powers and responsibilities that appointment carries with it under the Fire Protection and Prevention Act, 1997 (Ontario).

"Department" means the Consolidated Fire and Emergency Services Department, or such other name for the Department as the Municipal Councils may decide from time to time.

"Deputy Fire Chief" means the Deputy Chief of the Department, as appointed by by-laws of the Municipal Councils of both Aurora and Newmarket who shall also serve as the Deputy Fire Chief to both of the Towns of Aurora and Newmarket, having all of the powers and responsibilities that appointment carries with it under the Fire Protection and Prevention Act, 1997 (Ontario).

"Effective Date" shall mean 12:01 a.m., January 1, 2002.

"Municipal Councils" means the Municipal Councils for both the Town of Aurora and the Town of Newmarket, as elected pursuant to the Municipal Elections Act, 1996, as amended.

"Parties" means The Corporation of the Town of Aurora and the Corporation of the Town of Newmarket.

1. Establishment of Department

- 1.1 The Town of Newmarket hereby agrees to maintain a fire department, as of the Effective Date, which shall be responsible for the provision of fire and emergency services within the combined geographic and municipal boundaries of the Towns of Aurora and Newmarket, together with such additional geographic areas as may be contracted for from time to time, in accordance with the Fire Protection and Prevention Act, 1997 (Ontario), subject to the terms and provisions of this Agreement.

2. Establishment and Role of Committee

- 2.1 A joint Committee of the Municipal Councils of Aurora and Newmarket is formed and constituted as of the Effective Date for the purposes and with all the powers set forth in Schedule "A", attached to and forming a part of this Agreement.

3. Role of the Fire Chief

- 3.1 The Fire Chief shall act as the Head for the Department and shall have all of the powers and responsibilities as set out by the by-laws of the Parties, which shall be substantially in the form of Schedule "C", attached hereto, as well as the job description, this Agreement and the Fire Protection and Prevention Act, 1997, as amended. In the absence of the Fire Chief, the Deputy Fire Chief shall be vested with all of the authorities vested in the Fire Chief as prescribed herein.
- 3.2 In addition to the above duties, the Fire Chief shall be responsible for the review, from time to time, and implementation of the Emergency Plans for both the Towns of Aurora and Newmarket.
- 3.3 The Fire Chief shall be an employee of the Town of Newmarket. Notwithstanding this, the Fire Chief shall report to both of the Municipal Councils, through the Committee, with respect to the provision of fire protection services in accordance with the standards established hereunder, and as may be amended from time to time and shall report administratively to the Chief Administrative Officer of the Town of Newmarket ("CAO").
- 3.4 Neither Municipal Council nor any Member thereof shall provide direction directly to the Fire Chief. Directions for action on the part of either the Fire Chief or the Department shall be made only through the Committee. General administrative direction for action by the Fire Chief or the Department shall be given by the CAO.
- 3.5 The Committee and the CAO:
- a) shall not require an increase or decrease to the service levels as established by the Master Fire and Emergency Services Plan unless said Master Plan has been amended on the agreement of both Municipal Councils; and

- b) shall not require the Fire Chief, the Deputy Fire Chief or the Committee to take any action which is contrary to the provisions of this Agreement, the Fire Protection and Prevention Act, 1997, as amended, or the by-laws appointing the Fire Chief and Deputy Fire Chief and prescribing the duties of those positions.

4. Department Name

- 4.1 The Department will be known by such name as the Municipal Councils may decide from time to time.
- 4.2 The Committee shall have the right to commission and authorize the use of any insignia, crest, coat of arms or other indicia for the purpose of identifying the Department.

5. Prescribed Service Levels

- 5.1 The Parties acknowledge that each has approved the Master Fire and Emergency Services Master Plan (the "Master Plan") attached hereto as Schedule "B" and forming part of this Agreement.
- 5.2 The Parties hereby agree that the level of service to be provided throughout the combined geographic and municipal boundaries of the Towns of Aurora and Newmarket is the level of service as established by the Master Plan and each party shall, subject to any mutually agreed amendment of the Master Plan, commit all necessary funding and capital resources through the annual budget to ensure that the Committee and Department have all of the necessary resources, including prescribed staffing levels, to provide the level of service.
- 5.3 The Committee shall be responsible to provide fire protection and prevention services at the level as prescribed by the approved Master Plan.
- 5.4 The Parties hereby covenant to review the Master Plan every five years during the currency of this Agreement and shall, no later than twenty-four (24) months prior to the end of each ten (10) year term of this Agreement, finalize the said Master Plan which shall prescribe service levels for the next ensuing ten (10) year term of this Agreement.
- 5.5 Notwithstanding the foregoing, the Master Plan may be reviewed and, if necessary, amended at any time during the currency of this Agreement as circumstances warrant by mutual agreement of the Parties.

6. Budget

- 6.1 The Parties agree that the financial principles governing this Agreement are set out in Schedule "D" attached hereto and forming a part of this Agreement.

- 6.2 The Committee, in consultation with the Fire Chief, shall prepare draft annual operating and capital budgets setting out estimated operating and capital costs and projected revenue for the Department based on the provision of services at levels defined by the Master Plan. The estimates shall be submitted to the Municipal Council of Aurora for comment and then to the Municipal Council of Newmarket for consideration and approval. It shall be understood that Newmarket shall have sole authority to determine and approve the budgets.
- 6.3 The operating budget shall contain an amount in respect of administrative support services to be provided to the Committee and/or Department by Newmarket including, but not limited to Financial, Audit, Payroll and Purchasing Services, Secretariat Clerical and Administrative Services, Human Resource Services, Legal Services, Management Information Services, and Property Management and Maintenance Services.
- 6.4 Upon reviewing the estimates, the Municipal Council of Newmarket shall establish an overall budget for the Committee for the purposes herein described and, in doing so, the Municipal Council of Newmarket is not bound to adopt the estimates submitted by the Committee.
- 6.5 Upon approval of the Committee's budget by Newmarket's Municipal Council, Aurora hereby agrees to pay to Newmarket its proportionate share of the said budget in four equal instalments on the fifteenth (15th) day of each of the months of February, May, August, and November, during the currency of this Agreement. For the purposes of this Agreement, a party's proportionate share will be that fraction of the budget which is equal to the equally weighted average of:
 - a) the assessed value of the lands in that party's municipality over the aggregate of the assessed value of all lands in both Aurora and Newmarket; and
 - b) the number of responses made by the Department within the geographic boundary of each party in the immediately preceding year over the total number of responses made by the Department; and
 - c) the population of each party over the aggregate of the population of both Aurora and Newmarket.
- 6.6 For the purposes of calculating each party's proportionate share in accordance with Subsection 6.5 above:
 - a) the assessed value of lands shall be based on the current assessed value of all lands within each party municipality, as determined by the Regional Municipality of York; and

- b) the total number of calls of the Department shall not include calls outside of the geographic limits of Aurora or Newmarket pursuant to a services or mutual aid contract; and
- c) the population shall be the population as determined from time to time by the Regional Municipality of York.

Each of the above calculations shall be completed with information current to December 31 of the immediately preceding year and shall be in effect until December 31 of the next ensuing calendar year.

- 6.7 Notwithstanding the foregoing, major capital expenditures relating to structural work, additions or construction of any buildings on real property owned by a party shall not form a part of the capital budget of the Department and the party owning the said property shall be solely responsible for any costs relating to such capital expenditures. It is agreed that day to day maintenance of all real property will be the responsibility of, and at the cost of, the Department.
- 6.8 The Parties shall not divulge any information of which they have knowledge to be confidential whether communicated to or acquired by them in the course of carrying out the services provided pursuant to this Agreement. No such information shall be used by either party in any way without the approval of the other party.
- 6.9 Newmarket shall keep proper and detailed accounts and records in accordance with generally accepted accounting practices where applicable of all factors entering into the computation of the amounts payable pursuant to this Agreement. Aurora may during regular business hours at the offices of Newmarket, upon giving reasonable notice and at Aurora's sole expense, audit and inspect accounts, records, receipts, vouchers and other documents relating to the services performed pursuant to this Agreement and shall have the right to make copies and take extracts at its own expense. Newmarket shall afford all reasonable facilities, physical and otherwise, for such audits and inspections.
- 6.10 Aurora shall have the right to independently audit, at its sole expense, all of the finances, records and books pertaining to the operation of the Department.
- 6.11 The Parties agree that all revenue received from building plan review, rental of space in Fire Department buildings and services contracts with other municipalities shall be provided for the operation of the Department and shall serve to reduce the operational budget prior to the calculation of each party's proportionate share hereunder.

7. Property

- 7.1 Each party shall place all capital property, including real property, vehicles, rolling stock and equipment used by their respective Fire and Emergency Services Departments immediately prior to the Effective Date (hereinafter "contributed property") at the disposal of the Committee and the Department to be used for the purposes of this Agreement. It is hereby agreed that legal title to all real property will remain with each respective party. Proper maintenance of all property shall thereafter be the responsibility of the Committee and the Department. Notwithstanding the foregoing, major capital expenditures relating to structural work, additions or construction of any buildings on real property owned by a party shall be the sole responsibility of the party owning the said property. However, minor capital expenditures shall be included in the annual capital budget and shall be the responsibility of, and at the expense of, the Committee and the Department.
- 7.2 The Committee shall, from time to time, recommend any major capital expenditures required with respect to real property to the owner of that property and that owner shall consider same. In the event that the failure to undertake any recommended major capital expenditures would or may reasonably result in an inability on the part of the Committee or the Department to meet the prescribed service levels in the Master Plan, the owner shall, within eighteen (18) months, undertake and complete the said major capital expenditures. Notwithstanding the foregoing, major capital expenditures which are of an emergency nature shall take place immediately following the recommendation of the Committee at the cost of the party owning such property.
- 7.3 All contributed property and all property acquired after the Effective Date, with the exception of real property and buildings erected thereon, shall be owned jointly by the Parties in accordance with their proportionate share of expenses, as determined above. All real property and buildings erected thereon acquired after the Effective Date and all buildings for the use of the Department which may be constructed after the Effective Date shall be owned and/or constructed as determined by the Parties. In the event that the Parties cannot agree, the real property or the buildings, as the case may be, shall be owned and paid for on an equal basis as between the Parties.
- 7.4 As of the Effective Date, the Parties agree to undertake an audit to identify the value of the property each party contributes to the Department, excluding real property. Where one party's contribution in capital property is less, proportionately, than that same party's proportionate share of the operation and capital budgets for the first year of operation under this Agreement, it is hereby agreed that that same party will make a capital contribution at some time in the future, but during the first term of this Agreement, to bring its contribution up to its proportionate share of the budgets for the first year of operation.

7.5 At any time during the currency of this Agreement, any property, except real property, which is identified as surplus to the needs of the Department by the Committee may be sold. The proceeds of such sale shall be applied toward the operating and/or capital budgets of the Committee for the current or immediately subsequent year as the Committee may decide.

8. Staffing

- 8.1 All current staff employed within either the Aurora Fire and Emergency Services Department or the Newmarket Fire and Emergency Services Department shall, upon the Effective Date, be employed by Newmarket. For clarity, no volunteer firefighters are included as current staff.
- 8.2 The Committee shall, from time to time as needed, recommend a Fire Chief and Deputy Fire Chief for the approval of and appointment by the Municipal Councils of Aurora and Newmarket, by by-law.
- 8.3 The Fire Chief shall be responsible for the overall administration of the Department and shall hold office pursuant to the employment policies and practices for permanent full-time non-union positions of Newmarket and in accordance with the requirements of the Fire Protection and Prevention Act, 1997.
- 8.4 The Fire Chief shall adhere to the Administrative Policies and Procedures, including purchasing, personnel and all other administrative matters as established by the Town of Newmarket, from time to time, in the operation of the Department and for the purposes of determining applicable authority for actions, the Fire Chief shall have all of the authorities conferred thereby upon Department Heads.
- 8.5 The Fire Chief shall have the authority, on behalf of Newmarket, to retain and remove such employees as may be required for the proper operation of the Department, within the approved staff complement as established through the Master Plan, and to take disciplinary action against such employees where required, all subject to any collective agreement which may be in force from time to time.
- 8.6 The staffing levels set out in the Master Plan and in any collective agreement which may be in force from time to time shall be adhered to unless otherwise negotiated through the collective agreement process.
- 8.7 The Collective Agreement must be submitted for approval of and ratification by the Municipal Council of Newmarket.
- 8.8 It is understood and agreed by the Parties that the Committee shall not negotiate any collective agreements, but that the Fire Chief and the Human Resources staff of Newmarket shall be the representatives of Newmarket for the purposes of negotiation.

- 8.9 Those staff members delegated fire prevention responsibilities, including Fire Code inspection duties under the *Fire Protection and Prevention Act, 1997*, shall be appointed by both Municipal Councils, by by-law.

9. Further Powers of the Committee

- 9.1 The Committee shall direct the Fire Chief in the performance of his management duties but not with respect his statutory duties as Fire Chief under the *Fire Protection and Prevention Act, 1997*, as amended, and no individual member of the Committee shall give orders or directions to any employee, including the Fire Chief.
- 9.2 The Committee shall monitor the performance of the Fire Chief and, together with the Chief Administrative Officer for Newmarket, perform an annual performance review of the Fire Chief; ensuring that all Members of both Municipal Councils have had the opportunity to provide input to the review, as necessary.
- 9.3 The Committee shall have no authority to modify or revise the terms of this Agreement but may make recommendations to the Municipal Councils in this regard.
- 9.4 The Committee is hereby authorized to meet with representatives of other municipalities that are interested, with the objective of expanding the service area of the Department for the provision of Fire and Emergency Services beyond Aurora and Newmarket. Following such discussions, the Committee shall report to the Municipal Councils concerning proposed amendments to this Agreement resulting from the proposed admission of future Parties.

10. Indemnity and Insurance

- 10.1 Newmarket agrees to maintain adequate general liability insurance in an amount of not less than ten million dollars (\$10,000,000) against legal liability that may result from the activities and operations of the Department and/or the Committee and to ensure that all policies of insurance are endorsed to provide that Aurora is named as an additional insured. It is hereby agreed that the cost of the said insurance is an operational cost of the Department and shall be included in the operational budget.
- 10.2 Newmarket hereby agrees to indemnify and hold harmless Aurora against all actions, suits, claims, demands, losses, costs, charges and expenses including legal costs (hereinafter the "claims"), arising out of or in consequence of the activities and operations of the Department and/or the Committee save for such claims caused by either the negligence of or breach of this Agreement by Aurora. The terms and provisions of this Subsection shall survive any termination of this Agreement.

10.3 The Parties hereby agree that any and all liability resulting from all actions, suits, claims, demands, losses, costs, charges and expenses arising out of actions, incidents, grievances or investigations which occurred prior to the Effective Date against any party shall remain the sole liability of that party, shall not be transferred hereunder and that party shall wholly indemnify the other party with respect to any and all liability, including defence and legal costs pertaining thereto.

11. Resolution of Disputes

11.1 If there is dispute between the Parties to this Agreement with respect to its interpretation or application or an alleged violation, the Parties, as represented by their respective Chief Administrative Officers or such persons as they may direct, hereby agree to meet and discuss the matter within five (5) days following receipt of notice by one party to the other with the objective of resolving any dispute. For clarity, it is agreed that either party has the right to dispute the failure to meet or maintain service levels or its proportionate share of the budget, but that no matter involving the establishment of or modification to budgets or relating to human resource matters or matters arising from any collective agreements which shall be resolved by Newmarket, can be the subject of any dispute or referral to arbitration.

11.2 Following meetings of the Parties as provided for above, in the event that a mutually satisfactory resolution is not achieved within sixty (60) days following the receipt of the above notice by the other party, either party may issue a Notice Requesting Arbitration to the other in which event the Parties shall proceed to Binding Arbitration and the provisions for proceeding with Binding Arbitration set out within Schedule "E", attached hereto and forming a part of this Agreement, shall be followed.

11.3 Notwithstanding that a matter has been referred to dispute resolution under the provisions of this Section, the Parties shall throughout the period of dispute resolution endeavour to perform their respective obligations under the terms of this Agreement to the best of their abilities.

12. Term and Termination

12.1 This Agreement shall come into force commencing on the Effective Date and shall continue in force for a period of ten (10) years.

12.2 This Agreement shall automatically renew for additional terms of ten (10) years unless either party provides written notice not less than eighteen (18) months in advance of the last day of the then current ten (10) year term, in which case this Agreement shall terminate on the last day of the then current ten (10) year term.

12.3 In the event this Agreement is terminated, upon termination the Committee shall be dissolved. Notwithstanding the dissolution of the Committee, Newmarket covenants and agrees to maintain the records of the Committee for not less than ten (10) years following dissolution of the Committee.

12.4 In the event of termination of this Agreement, all jointly owned property shall be valued at its fair market value as at the date of termination and the property shall be divided between the Parties in proportions equal to the proportions in which they each contributed to the annual budget of the Board in the final year, or portion thereof, of the operation of this Agreement, unless the Parties otherwise agree in writing.

12.5 In the event of termination of this agreement, or if for any other reason Newmarket ceases to provide all or part of fire and emergency services within the municipal boundaries of Aurora, the Parties agree that all members of the Newmarket Professional Firefighters Association, or its successor, shall be guaranteed employment with one of the successor fire departments with no loss or diminution in seniority, rank, benefits, salary or any other terms and conditions of employment, and the provisions of the collective agreement with the Newmarket Professional Firefighters Association shall be binding on both Newmarket and Aurora respectively. For clarity, it is agreed that all firefighters employed by Newmarket immediately prior to January 1, 2002 will remain employed by Newmarket, all firefighters employed by Aurora immediately prior to January 1, 2002 will be employed by Aurora and all new firefighters employed by Newmarket after January 1, 2002 will be employed by either Newmarket or Aurora on such basis and subject to terms and conditions as will be negotiated by Newmarket and Aurora.

The Parties agree that any transition or implementation costs incurred to give effect to the requirements of this paragraph shall be paid by each Party in accordance with each Party's proportionate share of that year's budget.

12.6 The terms and provisions of this Section and Section 10 shall survive any termination of this Agreement.

13. Transition Costs

13.1 The Parties acknowledge that in order to ensure that this Agreement may become effective on the Effective Date, the Parties will incur costs between the date of this Agreement and the Effective Date. The Parties agree that the Town of Newmarket shall be responsible for and pay 60% of all such costs and the Town of Aurora shall be responsible for and pay 40% of all such costs.

14. Notice

14.1 Any notice which is permitted or required pursuant to this Agreement shall be in writing and shall be served personally or by registered mail upon the Clerk of each of the Parties at the following addresses:

The Corporation of the Town of Aurora
100 John West Way, P.O. Box 1000
Aurora Ontario L4G 6J1
Attention: Clerk

The Corporation of the Town of Newmarket
395 Mulock Drive, P.O. Box 328, Station Main
Newmarket, ON L3Y 4X7
Attention: Clerk

15. Severability

15.1 In the event that any covenant or term of this Agreement should at any time be held by any competent tribunal to be void or unenforceable, then the Agreement shall not fail, but the covenant, provision or term shall be deemed to be severable from the remainder of this Agreement, which shall otherwise remain in full force and effect.

16. Estoppel

16.1 No party or Parties shall call into question, directly or indirectly, in any proceedings whatsoever in law or in equity or before any administrative tribunal, the right of the Parties or any of them to enter into this Agreement or the enforceability of any term, agreement, provision, covenant and/or condition contained in this Agreement, and this clause may be pleaded as an estoppel as against any such party in any proceedings.

17. Successors and Assigns

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

IN WITNESS WHEREOF each of the Parties hereto has affixed its corporate seal by the hands of its proper officers on the date inscribed on the first page of this Agreement.

SIGNED, SEALED AND EXECUTED

THE CORPORATION OF THE TOWN OF AURORA

APPROVED TOWN OF AURORA
Council <input checked="" type="checkbox"/>
Committee _____
Date <u>Oct 9 2001</u>
Report # <u>ES01-07</u>



Mayor, Tim Jones




Town Clerk, Bob Panizza

CORPORATION OF THE TOWN OF NEWMARKET



Mayor, Tom Taylor



Town Clerk, Nancy Wright-Laking
2001-146

**BY-LAW 2001-146
SCHEDULE A**

**TERMS OF REFERENCE FOR THE AURORA-NEWMARKET FIRE
AND EMERGENCY SERVICES COMMITTEE**

Schedule A

**TERMS OF REFERENCE FOR THE AURORA-NEWMARKET FIRE AND
EMERGENCY SERVICES COMMITTEE**

MISSION PURPOSE AND OBJECTIVE

The Fire & Emergency Services Committee is charged with the responsibility of providing and administering a borderless single tier level of fire protection and prevention services throughout the entire geographic area for both the Towns of Aurora and Newmarket, in accordance with the Consolidated Fire Services Agreement, as well as the obligations contained in the Fire Protection and Prevention Act as amended and any regulations passed thereunder.

Although accountable to both the Council of the Town of Aurora and the Town of Newmarket, it is the responsibility of Committee members to make decisions which shall favour neither municipality, but will provide an equal level of service to all of the combined residents of both municipalities.

Mission Statement

Excellence in the provision of preventative and protective fire and emergency services to the communities of Aurora and Newmarket.

1. RESPONSIBILITIES OF THE COMMITTEE

The Fire & Emergency Services Committee shall be delegated the following responsibilities in fulfilling the mission statement:

1. Conduct planning for the provision of effective and efficient fire and emergency services, in accordance with the Consolidated Fire Services Agreement including fire suppression, fire prevention, fire safety, education, communication, training of persons involved in the provision of fire protection services, rescue and emergency services and delivery of all these services, in a fiscally prudent manner within the municipalities;
2. Present & maintain a Fire & Emergency Services Master Plan to meet the community needs and provide strategic direction for approval of the Municipal Councils
3. Recommend service levels, capital budgets, and operating budgets in accordance with the consolidated Fire Services Agreement and the approved Fire & Emergency Services Master Plan;
4. Administer the provision of fire services to the municipalities in accordance with the approved plans and budgets including the provision and use of facilities, equipment, human resources and programs;

5. Ensure that any agreements currently in effect relating to communications services and mutual aid with other municipalities are maintained and properly performed;
6. Provide regular and proactive information to the Councils of the participating municipalities on the operations of the consolidated fire services

2. ESTABLISHMENT OF COMMITTEE

A joint Committee of the Municipal Councils of Aurora and Newmarket shall be formed and constituted as of January 1, 2002 for the purposes of providing and administering fire protection and preventative services for both municipalities in accordance with the Consolidated Fire Services Agreement.

The Committee shall be called the " _____ ", or such other name as the Municipal Councils may decide, from time to time.

Membership

The Committee shall total six (6) members, composed of three (3) members of the Municipal Council of Aurora and three (3) members of the Municipal Council of Newmarket, whose terms shall be concurrent with the term of the Councils which appointed them. No member shall be permitted or eligible for membership for more than two (2) consecutive terms.

Any member may be removed or replaced at any time by the municipality on whose behalf the member was appointed.

No compensation shall be paid to the members in respect of their service on the Committee.

In an election year no meeting of the Committee shall be convened during that period of time between the municipal election and the appointment of the newly elected Members of Council to the Committee.

The Committee shall prepare a report/minutes outlining the Committee's activities to each Municipal Council following each meeting.

Chair/Vice-Chair

The Committee shall elect a Chair and Vice-Chair annually from its members. At any given time the Chair and Vice-Chair shall not both be members from the same municipality and the appointments shall rotate annually (i.e. where an Aurora member is Chair one year, a Newmarket member shall be Chair the subsequent year, and so on.) Each shall serve for a one (1) year term, unless a shorter term is determined by the Committee.

Duties of the Chair

- Call the meeting to order as soon after the hour fixed for the holding of the meeting as quorum is present
- Announce the business of the Committee in the order in which it appears on the agenda
- Announce any disclosures of interest
- Receive and submit all motions moved and seconded by a member

- Put to a vote all questions, which have been moved and seconded, or otherwise arise in the course of the proceedings and announce the results
- Decline to put to a vote any motion not in order
- Confine members engaged in debate within the rules of order
- Enforce the observance of order and decorum among members
- Name any member persisting in breach of the rules of order
- Receive all messages and other communication and announce them to the Board
- Rule on points of order
- Adjourn or suspend the meeting in the event of a grave disorder
- Designate the member who has the floor
- Have a vote in all matters of the Committee

Board Secretariat

The Municipal Clerk of the Town of Newmarket, or his or her designate, shall serve as the Secretary to the Committee, and shall be present at all meetings, and shall be responsible to maintain custody of all records, minutes, agreements and any other documents associated with the Committee.

The agenda shall be prepared by the Secretary of the Committee in consultation with the Fire Chief or, in his or her absence, the Deputy Fire Chief.

Procedures

Unless otherwise provided for in these terms of reference, the procedural bylaw of the Town of Newmarket shall apply to the proceedings of the Committee.

Meetings

Meetings shall be held regularly each month in conjunction with the municipal council schedule. A schedule shall be developed by the Secretariat with all Members agreement. Location of meetings will be rotated in both municipalities, to be planned at the time of scheduling. The first meeting of the Committee shall be held on Monday, January 7, 2002 at 7:00 p.m. at the Town of Newmarket.

Notice of meetings shall be provided by circulating the agenda to each member not less than five (5) business days prior to the meeting. Special meetings may be called without notice by a majority vote of all members achieved through a telephone or FAX poll by the Chair, or by the Fire Chief or the Deputy Fire Chief at the Request of the Chair.

Meetings conducted by the Committee shall be open to the public, subject to the following, and notice of them shall be published in the manner that the Committee determines.

The Committee may exclude the public from all or part of a meeting or hearing where a matter to be considered includes:

- a) the security of the property of the municipalities;
- b) personal matters about an identifiable individual, including employees of the municipalities;
- c) a proposed or pending acquisition of land for purposes of the municipalities;
- d) labour relations or employee negotiations with respect to the municipalities;

- e) litigation or potential litigation, including matters before administrative tribunals, affecting the municipalities; or
- f) a matter in respect of which the Committee, Council or other body has authorized a meeting to be closed under the Municipal Act or another Act
- g) the receipt of advice that is subject to solicitor client privilege including any communications necessary for that purpose.

Quorum

In order to constitute a quorum, at least two (2) members appointed by Newmarket and two (2) members appointed by Aurora shall be present at all times, and all matters shall be decided by a majority vote of the members attending, each of whom shall have one (1) vote including the Chair. In the event of a tie, the matter shall be deemed to have been denied or refused.

Majority

Any decision or recommendation of the Committee shall require the following:

- a) The concurring vote of a majority of the members present, and
- b) A concurring vote from at least one representative of each municipality.

A tie vote is considered a defeated vote.

3. ROLE OF THE COMMITTEE

The Committee shall make recommendations in accordance with the Consolidated Fire Services Agreement with respect to the service standards namely;

- fire & emergency services master plan
- annual capital & operating budgets
- labour contracts and amendments
- fire communication services and mutual aid agreements
- purchases or contracts related to fire services

Notwithstanding the above referenced responsibilities, the Town of Newmarket shall be responsible for any negotiations and execution of agreements related to any labour relation contracts and amendments thereto.

The Committee will be responsible for coordinating the " _____ " Fire & Emergency Services Department, which includes both full-time and volunteer firefighters. The Committee shall ensure the efficient and proper delivery of Fire and Emergency Services throughout the municipal boundaries of Aurora and Newmarket in accordance with the Consolidated Fire Services Agreement and service standards approved by the Council of both municipalities including and extending to the following:

- a) establish a program in the municipalities, which must include public education with respect to fire safety and certain components of fire prevention;
- b) establish and maintain an annual fees for services schedule;

- c) engage in mutual aid relationships with adjacent Fire and Emergency Services providers in York Region
- d) provide a tiered response to emergency events in Aurora and Newmarket;
- e) examine the feasibility of providing Fire and Emergency Services to other municipalities and the receipt of like services from other municipalities, subject to the collective bargaining agreement;
- f) meet all obligations and responsibilities of Aurora and Newmarket under the Fire Protection and Prevention Act, as amended and any regulations thereunder;
- g) consider the recommendations of the Fire Marshal concerning the operation of the Department and delivery of services to Aurora and Newmarket and report to the Municipal Council of the parties concerning these recommendations
- h) from time to time as needed, participate in the process for the recruitment of a Fire Chief;
- i) develop, with the Fire Chief, an ongoing communications process, including a quarterly report between the Department and the Municipal Councils;
- j) review departmental organization; and
- k) review such other matters as the Municipal Councils may determine.

Notwithstanding the above referenced functions, the Committee shall not interfere with any of the Fire Chief's statutory duties.

The Committee shall review and maintain a Master Fire and Emergency Services Plan that would establish and harmonize service levels throughout Aurora and Newmarket and standardize operating procedures for the Department. The Committee shall be responsible for providing at no time less than the current level of service in existence for the delivery of Fire & Emergency Services of each municipality, at the time of the effective date of this agreement.

The Committee may meet with any other municipalities that are interested, with the objective of expanding the service area of the Committee for the provision of Fire and Emergency Services beyond Aurora and Newmarket and consolidating Regional Fire and Emergency Services. Following such discussions, the Committee shall report to Aurora and Newmarket concerning the proposed amendments to this Agreement to implement such arrangements.

4. ROLE OF THE FIRE CHIEF

The Fire Chief shall act as the Department Head for the Department and shall have all of the powers and responsibilities as set out by the appointment by-laws of the participating municipalities, the job description, the Consolidated Fire Services Agreement and the *Fire Protection and Prevention Act*.

For the purposes of the Consolidated Fire & Emergency Services Agreement, the Fire Chief shall be an employee of the Town of Newmarket. Notwithstanding this, the Fire Chief shall act as the Fire Chief for both the Town of Newmarket and Town of Aurora and shall report to both Councils through the Committee for the provision of fire protection services in accordance with the standards established by the Consolidated Fire & Emergency Services Agreement. In addition to this, the Fire Chief shall also have access to the Council of the Town of Aurora for the purpose of discussing Fire & Emergency Services related issues that may impact the Town of Aurora.

5. PURCHASING AND PROCUREMENT

The purchase of equipment, materials and services for the operation of the Fire and Emergency Services Dept. shall be governed by the Town of Newmarket Purchasing Policies and Procedures, and the provisions of the collective bargaining agreement. The Town of Newmarket is hereby authorized to execute any documents and agreements for the Fire & Emergency Services Depart., which have been authorized by the Committee or the Fire Chief.

The Committee shall have the authority of the "Municipal Council", as outlined in the Town of Newmarket Purchasing Policies and Procedures, to approve expenditures for the operation of the Department, including the acquisition of capital property, equipment, rolling stock and supplies subject to the approved capital and operating budgets.

The Fire Chief shall have authority as the "Department Head" to approve expenditures for the operation of the Department, including the acquisition of equipment, rolling stock and supplies subject to the approved capital and operating budgets. Such authority shall be exercised in accordance with the spending level authority, financial controls as outlined in the Newmarket Purchasing Policies and Procedures.

6. BUDGET

The Committee, in consultation with the Fire Chief, shall prepare draft annual operating and capital budgets setting out estimated operating and capital costs and projected revenue for the Department, in accordance with the Consolidated Fire Services Agreement and the approved Fire and Emergency Services Master Plan. The estimates shall be submitted to each of the Municipal Council of Aurora and Newmarket for approval.