

THE CORPORATION OF THE MUNICIPALITY OF POWASSAN

BY-LAW NO. 2010-33

Being a by-law to authorize an Agreement between the Corporation of the Municipality of Powassan and the Township of East Ferris for Playground Inspection Services.

WHEREAS the Council of the Corporation of the Municipality of Powassan is desirous of entering into an agreement for providing playground inspection services to the Township of East Ferris.

NOW THEREFORE BE IT RESOVLED THAT THE COUNCIL OF THE CORPORATION OF THE MUNICIPALITY OF POWASSAN ENACTS AS FOLLOWS:

1. That the Mayor and CAO-Clerk be authorized to execute the agreement attached as Appendix "A" and forming part of this by-law.
2. That this By-law be effective upon adoption.

Adopted in August 3, 2010.

Mayor

CAO-Clerk

This agreement dated the 3 day of August in the year 2010

BETWEEN

The Corporation of the Township of East Ferris, herein called the “Township of East Ferris”

AND

The Corporation of the Municipality of Powassan, herein called the “Municipality of Powassan”

WHEREAS the Township of East Ferris and the Municipality of Powassan desire to enter into a Shared Services Agreement for the provision of services by the Municipality of Powassan’s professional playground equipment inspector (herein called the “Playground Equipment Inspector”) to undertake playground equipment inspections associated with public use playground equipment facilities in the Township of East Ferris;

NOW THEREFORE WITNESSETH that in consideration of the covenants contained herein, the Township of East Ferris and the Municipality of Powassan hereby mutually agree as follows:

ARTICLE 1. GENERAL CONDITIONS

1.1 Ownership of Documents

The copyrighted “Canadian Parks and Recreation Association (CPRA), Canadian Playground Safety Institute Practical Course Resource Manual © 2007, Ottawa, Ontario, Canada” shall be used in all reports prepared or provided by the Playground Equipment Inspector in connection with the Playground Equipment Monthly and Annual Inspections in the Township of East Ferris, and will belong to the Township of East Ferris.

1.2 Confidential Information

It is the responsibility of each party to identify to the other party all confidential information connected with any inspection being the subject of this agreement. Confidential information acquired in the course of any such inspection shall not be used or divulged by either party, or their employees, consultants, subconsultants or agents, without the prior written approval of the other party, or as may be required by regulatory authorities having jurisdiction. This requirement shall not prohibit the Playground Equipment Inspector from acting to correct or report a situation that the Playground Equipment Inspector may reasonably believe to endanger the safety or welfare of the public, provided the Playground Equipment Inspector notifies the Township of East Ferris that the Playground Equipment Inspector intends to provide such notice as soon as reasonably possible. In the event that the Playground Equipment Inspector becomes legally compelled to disclose confidential information, the Playground Equipment Inspector shall forthwith notify the Township of East Ferris of this requirement. Such disclosure shall not result in any liability hereunder.

1.3 Insurance and Liability

The Township of East Ferris shall at all times during the term of this agreement, maintain in force professional (errors and omissions) and comprehensive general liability insurance appropriate to the duties and responsibilities of the Playground Equipment Inspector pursuant to this agreement. It is understood and agreed that the Township of East Ferris will provide a copy of this comprehensive liability policy and include the Municipality of Powassan as an additional named insured prior to the execution of this shared services agreement. The Township of East Ferris shall indemnify and save harmless the Municipality of Powassan and the Playground Equipment Inspector from any claims, actions or litigation arising from matters related to the Playground Equipment Inspector's duties or responsibilities pursuant to this agreement. For the purposes of this provision, "claim or claims" means a claim or claims in contract or tort and the Municipality of Powassan includes the Municipality of Powassan Council, officers, employees, representatives, consultants and the Playground Equipment Inspector.

The Municipality of Powassan and the Playground Equipment Inspector shall at all times during the term of this agreement maintain insurance coverage for automobile insurance for vehicles used as part of his duties and responsibilities pursuant to this agreement in the minimum amount of \$1,000,000 and shall provide the Township of East Ferris with proof of Automobile Insurance (inclusive limits) for owned vehicles.

It is understood and agreed that the Municipality of Powassan, the Township of East Ferris and the Playground Equipment Inspector shall not change or cancel the insurance coverage required under this agreement until 60 days after written notice of such change or cancellation has been delivered to all the parties to this agreement.

1.4 Successors and Assigns

This agreement shall inure to the benefit of, and be binding upon the parties hereto, and their executors, administrators, successors and assigns, except as otherwise provided herein. Neither of the parties to this agreement may assign this agreement without the prior written consent of the other.

1.5 Changes, Alterations and Additional Services

After giving notice to the other party in writing, the Township of East Ferris or the Municipality of Powassan may at any time after the execution of this agreement or the commencement of the services, request to extend, increase, vary, delete or otherwise alter the services forming the subject of this agreement. Any increase or reduction in the requirement for services shall be the subject of negotiation and no such change shall require the execution of a formal amendment to this agreement.

1.6 Termination and Suspension

Either party to this agreement may at any time amend or terminate this agreement upon 60 days written notice. The Township of East Ferris may suspend services at any time by providing a notice in writing to the Playground Equipment Inspector and the Municipality of Powassan. Upon receipt of such written notice, it is agreed that the Playground Equipment Inspector shall perform

no further services.

If either party to this agreement is in default in the performance of any of the party's obligations set forth in this agreement, the other party may require that such default be corrected by written notice.

If within 30 days of receipt of such notice such default is not corrected, the other party may immediately terminate this agreement, without limiting any other right or remedy it may have.

1.7 Records

To provide information on the calculation of fees on a time basis, the Municipality of Powassan shall ensure that a detailed record of the hours worked by their staff employed is kept and the Township of East Ferris may inspect during regular office hours, on receipt of reasonable notice, respecting any item that the Township of East Ferris is required to pay on a time basis as a result of this agreement.

1.8 Indemnification

Each party to this agreement shall indemnify and save harmless the other party from and against all claims, actions, losses, expenses, costs, or damages that the other party may suffer, sustain, or incur arising from the other party's negligent acts or the negligence of the other party's employees, directors, officers, consultants, sub consultants or agents in the performance of this agreement.

1.9 Approval by Other Authorities

Unless otherwise provided in this agreement, or explicitly required by legislation, where the work of the Playground Equipment Inspector is subject to the approval or review of an authority, government department, or agency other than the Township of East Ferris, preparation of applications for approval or review shall be the Playground Equipment Inspector's responsibility, but shall be submitted through the Township of East Ferris's offices.

1.10 Entire Agreement

This agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and cancels and supersedes any prior understandings and agreements between the parties hereto with respect thereto. There are no representations, warranties, forms, conditions, undertakings or collateral agreements, express, implied or statutory, between the parties other than as expressly set forth in this agreement.

ARTICLE 2. RESPONSIBILITIES OF THE TOWNSHIP OF EAST FERRIS

2.1 General Responsibilities

The Canadian Playground Safety Institute recommends that all playground owners have at least one certified playground inspector at their disposal (on staff, or through an outside agency/consultant)

The Township of East Ferris shall:

- A. engage others directly, where required by the Playground Equipment Inspector, to perform the specialized services necessary to enable the inspector to carry out fully the Playground Equipment Inspector's duties. The retention of such specialized services by the Township of East Ferris shall be subject to the joint approval of the Township of East Ferris and the Playground Equipment Inspector in accordance with the municipality's procurement and purchasing policies.
- B. give the Playground Equipment Inspector the authority to act as the Township of East Ferris's agent in all matters falling within the scope of the Playground Equipment Inspector's services;
- C. review promptly all documentation submitted by the Playground Equipment Inspector, and inform the Playground Equipment Inspector of decisions in time for the orderly progress of the Inspector's services;
- D. arrange and make provision for the Playground Equipment Inspector's entry and access to public use playground equipment sites in the performance of the duties
- E. Designate in writing a representative to have authority to transmit instructions to, and receive information from, the Playground Equipment Inspector, and advise the inspector in advance if this representative is to be changed;
- F. notify the Playground Equipment Inspector immediately, whenever the Township of East Ferris becomes aware of a defect or deficiency in the public use playground equipment;
- G. perform monthly repair and/or maintenance on playground equipment.

ARTICLE 3. RESPONSIBILITIES OF THE MUNICIPALITY OF POWASSAN

3.1 General

Under this agreement, the Municipality of Powassan shall render playground equipment inspection services to the Township of East Ferris through the sharing of its Playground Equipment Inspector in a timely manner and with the degree of care, skill and diligence normally provided in the performance of services for similar projects to that contemplated by this agreement, at the time and place that such services are rendered. In connection with this agreement, the Playground Equipment Inspector shall be available to perform the services as included in Appendix "A" which forms part of this agreement.

3.2 Reports to Council

The Playground Equipment Inspector shall be available at their request, to attend meetings with Council or the administrative staff of the Township of East Ferris in order to provide updates and reports on any of the inspections being undertaken pursuant to this agreement and shall recommend and advise Council for the Township of East Ferris on any activities and/or any actions required to be carried out as part of these services being rendered.

ARTICLE 4. FEES AND DISBURSEMENTS

4.1 Definitions

For the purposes of this agreement, the following definitions shall apply:

“Hourly Billing Rate” is defined as the hourly rate for billing purposes for the Playground Equipment Inspector working on the various phases of the project and shall include charges for existing computers and equipment used by the inspector for the individual inspections. This rate is subject to the cost of living and merit adjustments provided by the Municipality of Powassan to its’ employees and will be reviewed and adjusted if necessary at the beginning of every year.

4.2 Basis of Payment

The Township of East Ferris shall pay the Municipality of Powassan the Playground Equipment Inspector’s fee, calculated on a time basis, for that part of the services provided to the Township of East Ferris under this agreement. Fees shall be computed on the basis of hourly billing rates as included in Appendix “B”, which forms part of this agreement.

4.3 Reimbursable Expenses

The Municipality of Powassan shall be reimbursed at cost, for all reasonable expenses the Playground Equipment Inspector incurs properly in connection with the services being provided to the Township of East Ferris pursuant to this agreement, including all applicable taxes.

Reimbursable expenses include, but are not limited to:

- . traveling expenses;
- . progress reports;
- . supplies and equipment;
- . pre-approved training and development expenses directly related to the shared services provided;

4.4 Applicable Sales Taxes

Applicable sales taxes comprise federal and provincial sales taxes and value-added taxes applicable to the Playground Equipment Inspector’s fees or any other payments hereunder, such as the GST.

4.5 Payment

The Municipality of Powassan shall submit monthly to the Township of East Ferris an invoice identifying the:

- . time spent by the Playground Equipment Inspector providing services to the Township of East Ferris
- . hourly billing rates, reimbursable expenses, and applicable sales taxes for all services completed in the immediately preceding month.

The Township of East Ferris shall pay such invoice within 30 days after submission by the Municipality of Powassan.

ARTICLE 5. OTHER PROVISIONS

5.1 Address and Place of Notice

A notice required or permitted to be given by either party hereunder shall be sufficient if delivered personally or mailed by First Class Mail, Postage Prepaid or by Priority Post to the following addresses:

- a) Municipality of Powassan
P.O. Box 250
466 Main Street
POWASSAN ON P0H 1Z0
Attention: CAO/Clerk.

- b) Township of East Ferris
390 Hwy. 94
Corbeil, ON P0H 1K0
Attention: CAO-Clerk.

5.2 Term of the Agreement

Subject to this Agreement being terminated in accordance with Subsection 1.6, this Agreement shall be effective from the 3rd day of August 2010 until the 31st day of December, 2010. This Agreement may be renewed for a further term of 2 years, upon the Township of East Ferris giving sixty days written notice to the Municipality of Powassan on the same terms and conditions or with amended terms and conditions which shall be agreed to by both Parties.

Signed this ____ day of August, 2010.

Signed this 3rd day of August, 2010.

For the Township of East Ferris:

For the Municipality of Powassan:

Mayor, Bill Vrebosch

Mayor, Bob Young

CAO-Clerk, John Fior

CAO-Clerk, Roger Labelle

**APPENDIX “A”
Services Provided**

The Municipality of Powassan Playground Practitioner shall perform the following services relating to playground inspections:

1. Monthly inspections of playgrounds, from May to September of each year, within the municipal boundaries of the partnering Township to ensure compliance with the CSA.
2. Prepare a report of the monthly inspection and provide copies of completed inspection forms, along with recommendations if required.
3. Coordinate maintenance programs with appropriate staff. Monthly maintenance will be completed by the partnering municipality and shall include, but not limited to, tilling the protective barriers, greasing equipment, checking torque on bolts, replacing broken equipment, painting and cleaning.
4. Upon signing of Agreement meet with appropriate staff to develop inspection sheets and inspection schedules.

**APPENDIX “B”
Hourly Billing Rate**

Employee	Hourly Billing Rate
Playground Equipment Inspector	\$ \$40.00 per hour