# Developing Municipal Type Service Agreements

## A Handbook for Fire Protection Agreements

# Introduction

## ♦ using this handbook

Municipal type service agreements (service agreements) have been, and continue to be, important mechanisms for communities to access affordable and sustainable municipal services such as water, sewer, fire protection, and garbage collection.

This is a handbook to support you in developing an agreement for the provision of fire protection services to your community.

Developing a service agreement is a staged process. This handbook can be used when you're ready to develop and negotiate the terms of your agreement. This handbook often refers to agreements between two communities, and is written from the perspective of a local government providing services to a neighbouring First Nation as this is the most common scenario. Increasingly, First Nations are taking on the role of being the service provider. The content in this handbook remains relevant to these scenarios if the reader considers the First Nation in roles that mention the municipality. Similarly, this handbook can also be used to develop service agreements between a community and a private contractor.

### before you use this handbook

Diving right into developing terms of a service agreement is often not the fastest way to get to a finished agreement. Developing the agreement will often go much more smoothly if you do the necessary preparation work first.

**You're ready to use this handbook if you:**

- Have an understanding of what your service needs are, for today and for the future.
- Have identified that a service agreement is the most effective way of meeting these needs.
- Have developed a memorandum of understanding and/or principles for working together at a government-to-government level.
- Have determined that service delivery through a service agreement is feasible, and what (if any) infrastructure is required to enable service delivery (see special note at the end of this section).
- Have done some preparation to understand the key issues and priorities of neighbouring community, that might impact their ability or interests to provide service (if they are providing the service).

## how to use this handbook

Every service agreement contains a set of core components, or contract terms, that are specifically tailored to reflect the agreement for service delivery between the two communities.

**This handbook identifies:**

- The 11 service agreement contract terms that are common to the majority of service agreements. A list of other common contract terms, and brief definitions for these terms have been included in the Appendix.
- The decisions that will need to be made for each term, in order to write it into your service agreement.
- Some important things to consider before making the decisions.
- Some example contract terms that can be used or modified directly in your service agreement.

A blank template has been included at the end of this handbook, which can be filled in using example terms after you have worked through the key decisions.

## step-by-step

**STEP 1.** **Define the process.** Work with your service agreement partner to define a process for drafting the service agreement for negotiation. How will key decisions be made? Will decisions be discussed before writing the first draft of the agreement? (This is recommended.) Who will write the first draft? What will be the process for negotiation? Share this handbook with your service agreement partner if it is helpful.

**STEP 2.** **Make the key decisions.** Work through each of the key decisions for each of the service agreement terms, ensuring to discuss the considerations. Document and communicate the key decisions made, even if these are just opening points for further negotiation. Ideally, work back and forth with your service agreement partner to get to a set of key decisions that you agree on.

**STEP 3.** **Draft the agreement.** After making the key decisions with your service agreement partner, select sample contract terms to place into the blank template. Modify the examples as necessary to reflect your situation.

**STEP 4.** **Legal review.** Your service agreement should be reviewed by legal counsel to ensure that it includes the necessary terminology, includes appropriate clauses about liability, and does not create any unintentional conflicts.

## Joint investment in infrastructure: a special note

New infrastructure or infrastructure upgrades may be required to enable fire protection services to be provided from one community to another. These upgrades may include water system upgrades to provide the water pressure required for firefighting, upgrading roads and/or bridges to ensure they are safely accessible by fire trucks, the construction of fire halls, and the purchase of fire trucks or firefighting equipment. Any infrastructure upgrades or equipment purchases should be identified before developing a service agreement, as part of the feasibility assessment stage. In some cases, infrastructure upgrades can be designed to benefit both parties, in which case the costs may be shared.

The arrangements for cost sharing vary greatly from community to community, but typically reflect the principle that costs are shared in proportion with the benefit received.

How should investments in infrastructure be reflected in service agreements? One approach is to have a separate contract agreement for the infrastructure investment (keep the service agreement simple by keeping the details of the investment out of it), and acknowledge the infrastructure investment in the service agreement so that future staff and elected officials administering the agreement know that investment in infrastructure was made. Investment in infrastructure may be acknowledged in these contract terms:

- Up front, in the introductory statements (e.g. "Whereas investment in infrastructure was made by ___ to facilitate delivery of services...).
- In Levels of Service, to specify the capacity that the upgraded infrastructure has been designed for, and the portion of that capacity available to the party receiving the services.
- In Roles and Responsibilities, to clarify who owns and maintains the new or upgraded infrastructure and/or equipment.
- In Termination of the Agreement, to outline conditions for terminating the agreement that protect the up-front investment made in infrastructure upgrades.

# The Core

♦ core contract terms of a service agreement

1.0 TERM OF AGREEMENT

2.0 RENEWAL TERMS

3.0 SERVICE AREA

4.0 LEVEL OF SERVICE

5.0 ROLES AND RESPONSIBILITIES

6.0 RATES AND PAYMENTS

7.0 SUSPENSION AND TERMINATION

8.0 NOTIFICATION

9.0 GROWTH AND DEVELOPMENT

10.0 DISPUTE RESOLUTION

11.0 COMMUNICATION

# 1.0 | TERM OF AGREEMENT

## what it is

The term of agreement is the duration of the contract.

## why it's important

→ It determines how long of a commitment you and your service provider are agreeing to (to receive / provide services).

## key decisions

→ How long do you want your agreement to be for?

- Short term (less than 5 years)
- Medium term (5-10 years)
- Long term (Greater than 10 years)

## key considerations

- Fire protection service agreements tend to be for periods of 5 years.
- A shorter agreement gives greater flexibility (to try out provider(s), renegotiate terms, etc.), while a longer agreement provides more stability and certainty that your service needs will be taken care of for the foreseeable future.
- Agreements with longer terms may contain schedules that are updated more frequently (e.g. rates, service, area, etc.).

## example contract terms

1 "This Agreement is for a term of 5 years commencing on the 1st day of March 2016 and expiring on the 28th day of February 2021."

# 2.0 | RENEWAL TERMS

## what it is

Renewal terms make it clear whether the agreement can be renewed, and the conditions for renewing it.

## why it's important

- It allows the agreement to be renewed or extended for an additional term.
- It reduces the administration time and effort to develop new agreements.
- It maintains consistency in the terms of the agreement.

## key decisions

- Can the agreement be renewed?
  - Yes
  - No
- Who may renew the agreement?
  - First Nation (only)
  - Service provider (only)
  - Both parties (mutual agreement)
- What needs to happen for the agreement to be renewed?
  - Advanced notice
  - No action necessary
- For how long can the agreement be renewed for?
  - Same period as original agreement
  - Other, as agreed by the parties
- How many times can the agreement be renewed for?
  - Renewal limits
  - Unlimited

## key considerations

- Mutual agreement terms are preferred (i.e. where both parties have to agree to renew), as it ensures both parties are on the same page and are committed to the relationship.
- If the agreement is functioning to the satisfaction of both parties, it may be desirable to renew the agreement, rather than start over with a new one.
- Agreements may contain schedules that are updated at the time of renewal (e.g. rates).

## example contract terms

1 "The Municipality grants to the First Nation the exclusive right, at the sole option of the First Nation, to renew this Agreement for a further [5 years] on the same terms and conditions herein EXCEPT for the Fee Schedule, the terms of which shall be renegotiated between two parties (for the purposes of renewal only) and the Fee Schedule shall be amended accordingly."

2 "If the First Nation fulfills the terms and conditions of this Agreement so as to be on good standing with the [PROVIDER], the First Nation shall have an option to renew the Agreement for a one-year additional term of one year each, and may exercise such option by providing the [PROVIDER] written notice at least one month in advance of the expiry of the initial term or any renewal term. The same terms and conditions as outlined in this Agreement shall apply to each renewal term. Failure to provide such notice shall extinguish the renewal option under this Agreement."

# 3.0 | SERVICE AREA

## what it is

Service area identifies what specific homes; community facilities; commercial, industrial and/or institutional buildings; or areas in the community will receive the fire protection services.

## why it's important

- Ensures the First Nation, residents, and the service provider are all clear on who will be (or won't be) receiving service.

## key decisions

- What properties or areas of your community require fire protection services?
  - All houses and buildings
  - Certain houses and buildings
  - Other areas without houses or buildings (e.g. campground)
- How many houses and / or buildings are there in the service area?
- Where are they located?
  - Reserve names
  - Unit addresses
  - Reserve / unit map
- Are there any buildings or areas that are excluded?
- Are the buildings that require fire protection accessible for service?
  - Roads and bridges are accessible for a fire truck
  - Water pressure is sufficient throughout the service area

## key considerations

- It is important to define as clearly as possible what areas / buildings / units will be receiving the services.
- Your service agreement should include a map or specifically listed addresses.
- You may want to include maps or addresses in a schedule to the agreement, which will make it easer to update without changing the rest of the agreement.
- The service area (and any revisions to the service area) should be reviewed with the Fire Chief, or designate, to ensure that services can be adequately provided to the desired area.
- The service area may include buildings that are unoccupied.

## example contract terms

1 "Subject to the terms and conditions of this Agreement, the [PROVIDER] shall provide fire protection services to the Reserve. These services are for all buildings on the Reserve and the First Nation shall be responsible for payment to the [PROVIDER] for all buildings on the Reserve."

2 "The fire suppression service shall be provided within the service area described on the [Map Attachment] on a 24-hour basis from the [PROVIDER] Fire Hall."

3 "On the first day of December during each year of the Term, the First Nation shall provide the [PROVIDER], in a form and with content satisfactory to the [PROVIDER], information regarding all parcels of property and other taxable folios within the lands. On an annual basis, the [PROVIDER] and the First Nation, acting reasonably will determine the number of properties which will be serviced under this Agreement for each upcoming year, collectively the 'Serviced Properties'."

# 4.0 | LEVEL OF SERVICE

## what it is

Level of service clearly states the qualities of the service being provided and paid for.

## why it's important

- It is the reason why the service agreement is in place (i.e. to provide and receive a service).
- It determines that amount and quality of service (i.e. level) that will be provided and received.
- It can vary based on each party's ability to pay for or provide service, or other factors.

## key decisions

- Who will be providing the service?
  - Municipal Fire Department
  - First Nation Fire Department
  - Volunteer Fire Department
  - Other
- Where will the services be coming from?
- What services do you require?
  - Fire suppression (putting out fires)
  - Fire prevention (education, fire alarm testing, etc.)
  - Emergency services
  - Fire code inspections
- Will there be a mutual aid agreement?
- What type of areas require the service?
  - Residential
  - Commercial
  - Industrial
  - Natural

## key decisions

- Is the same level of service required for all units, buildings, locations within the service area?
- When do you require service to be available?
  - 24 hours/day
  - Other
- Is there a 24 hour/day dispatch service available?
- Where will the service be coming from? Will the response time be adequate?
- Are there limits to the service?
  - Excludes forest fires
  - Excludes certain uses (i.e. industrial)
  - Height limits on buildings (i.e. up to three storeys)
- Are there certain conditions required to receive service?
  - Buildings up to code
  - Availability / proximity of fire hydrants
  - Road upgrades / access requirements
  - Water pressure levels

## key considerations

- 24-hour a day service is most common, due to the unpredictability of fires.
- It is important to know where services will be coming from to gauge response times. Industry standard for maximum response time is 15 minutes from when the alarm is registered.
- Most service providers will require that the level of response / service be at the discretion of the Fire Chief, based on need and availability at the time.
- It is common for service agreements to state that fires within the municipality will take priority for resources, at the discretion of the Fire Chief.

## key considerations

- For fire protection services, the service provider will generally be the municipality. Fire protection services can also be served through a volunteer fire department depending on the size of the communities. A service agreement that enlists the services from a volunteer fire department looks essentially the same as it would with a conventional fire service.
- Municipal service providers typically are unable to provide forest fire suppression services. This may require the assistance of the Ministry of Forests.
- Different fire departments may have different equipment and may not all be suited to fighting the same types of fires or reach the same building heights. It is best to speak to the fire department to determine what the limitations of its equipment are, as this may influence the level of fire suppression that can be provided to current buildings or future development.
- Service agreements are often in rural settings that can be very close to the forest edge. Forest fires are natural hazards that are unavoidable in British Columbia. However, it is important to set expectations on who is responsible for dealing with these hazards as they arise. Forest fires vary in intensity and can often be large and fast moving. These situations will require special services and equipment from the Ministry of Forest, Lands and Natural Resources to combat. If the local fire chief sees the need they may need to call in their support. The parties responsible for the costs associated with these services are also laid out in the agreement.
- Many service agreements simply state that fire protection services will be the same on the reserve lands as within the municipality. However, it is beneficial to clearly set out the exact nature of the services to ensure all parties have a full understanding of what's expected / required.

## example contract terms

1 "The fire suppression service shall be provided within the service area described on the [Map Attachment] on a 24-hour basis from the [PROVIDER] Fire Hall."

2 "The [MUNICIPALITY] agrees to provide fire protection to the Reserves on the same basis as the fire protection to the [MUNICIPALITY]."

3 "It is expressly understood and agreed that the Fire Department need not respond to fire calls from the First Nation while there is a fire in progress elsewhere in the Municipality, which in the opinion of the Fire Chief is the more serious to human life or property, or both."

4 "It is expressly understood and agreed that the fire equipment of the Fire Department cannot provide fire protection services to any building higher than three (3) storeys."

# 5.0 | ROLES & RESPONSIBILITIES

## what it is

Roles and responsibilities clearly state what each party is responsible for under the agreement.

## why it's important

- It ensures that all parties know what they are responsible for so that the agreement functions as it's intended.
- Defining roles and responsibilities is especially important for new staff who are tasked with administering an agreement that was developed before them.
- It can significantly impact level of service and costs.

## key decisions

- What are the responsibilities of the First Nation? Common responsibilities include:
  - Payment on-time and in full
  - Construction and maintenance of on reserve fire fighting infrastructure (water systems, hydrants)
  - Mapping, street naming, addressing, and signage
  - Ensuring roads and bridges are built and maintained to provide fire trucks access to buildings
  - Access to reserve and service areas
  - Updating service area specified in the service agreement as changes occur
  - Notification [see Section 8, Notification]
  - Record keeping and administration (i.e. building plans, incident reports);
  - Compliance with other regulations

## key decisions

- Liability insurance

→ What are the responsibilities of the service provider? Common responsibilities include:

- Service provision as per agreement
- Invoicing
- Notification [see Section 8, Notification]
- Provision and maintenance of off reserve firefighting infrastructure & equipment
- Decision-making authority regarding the use, allocation, and application of:
  - Existing resources (i.e. personnel, equipment, etc.)
  - Additional resources (other departments, Ministry of Forests)
- Inspections (hydrants, buildings)
- Reviewing service area
- Demolition of buildings
- Right to refuse or stop service, typically due to:
  - Unsafe conditions
  - Access limitations
- Liability insurance

## key considerations

- Both parties in the agreement should have liability insurance to an amount deemed by both parties to be appropriate.
- Fire service agreements often delegate a large amount of responsibility to the Fire Chief, who is responsible for weighing the needs of all users in the system. This includes determining when to respond to a call (for example, if there are two fires at the same time, which to respond to first); what resources to utilize (number of firefighters, trucks); whether to demolish certain structures to provide access for equipment to fight a fire or to keep a fire from spreading; or whether the Ministry of Forests needs to be called for support.
- These decisions can significantly impact the level of service at the time and the costs to the First Nation.

## example contract terms

### DECISION-MAKING AUTHORITY / ALLOCATION OF RESOURCES

1 "The Fire Chief shall have sole responsibility for the direction of the equipment and personnel of the Fire Department while attending at any fire on the Reserve."

2 "The First Nation agrees that if during the course of any fire on the Reserve, the Fire Chief considers the services of the Ministry of Forests are warranted, then the said Ministry shall be contacted and requested to assist. In the event the said Ministry assists as aforementioned, the costs shall be borne by the First Nation."

3 "If the [PROVIDER]'s Fire Chief contracts for the hire of special equipment, reasonably required in accordance with generally accepted firefighting practice in order to suppress or contain a fire on the Reserve, including without limitation any wildfire, then, and subject to any existing Agreements or protocols between the Province of B.C. and the Government of Canada, the [PROVIDER] will include such costs in the next invoice provided to the First Nation pursuant to [RATES]."

# example contract terms

### ACCESS / INSPECTIONS

1 "The Fire Chief or designated Fire Department members may enter upon the Reserves two times per year (e.g. April and September) to inspect and test the hydrants at all reasonable times."

2 "The Fire Chief, his lawful deputy, the Local Assistant or the Fire Commissioner or such other duly qualified person shall have the right to enter upon the Reserve and to inspect and test the hydrants at all reasonable times."

### STREET NAMING AND ADDRESSING / SITE ORIENTATION

1 "The First Nation will name any streets within the Reserve and prominently display such names on signposts located at every intersection of such streets, and will require that identifying numbers are affixed to all buildings within the Reserve so that such numbers are easily visible from the street frontage."

2 "The First Nation will ensure the fire department receives an on-site orientation tour of new developments and expansions (including, but not limited to buildings, subdivisions, water systems and related infrastructure). The purpose of these tours is to allow the fire department to gain knowledge (type of construction, hazards, building use, proximity to water supply, etc.) of the development and conduct pre-incident planning."

# example contract terms

### MAINTENANCE

1 "The First Nation shall maintain and service all fire hydrants on the Lands to those standards set out in the National Fire Protection Association's Practices Guides, as updated from time to time, or those standards which the [MUNICIPALITY] dictates from time to time, acting reasonably. The First Nation shall be responsible for the cost and expense incurred in this maintenance and servicing."

2 "The First Nation shall keep and maintain all hydrants located on the Reserves in good condition at all times and shall undertake to repair all hydrants and water supply lines as necessary."

### DEMOLITION

1 "The Fire Chief of his deputy in charge at any fire may cause the demolition of any premises on the Reserve or any part thereof, when deemed necessary to prevent the spread of fire, damage to property, injury or loss of life, and no member of the First Nation shall prevent such action. "

### RIGHT TO REFUSE / STOP SERVICE

1 "The [PROVIDER] is not obliged to provide the Services to any occupier to building on the lands if there is an outstanding stop work or fire prevention order in respect of the building that has not been remedied to the satisfaction of the Fire Chief or if the Reserve infrastructure necessary for the provision of the services, including hydrants and water mains, do not meet the applicable safety and engineering standards for such works in the [MUNICIPALITY]."

2 "At the sole discretion of the Fire Chief or Deputy Fire Chief, the City Fire Department may not respond to areas where access routes do not provide sufficient access road or road loads to support fire fighting equipment, including access road culverts."

## example contract terms

3 "In the event that due to incident scene conditions and available resources a defensive strategy and /or withdrawal of fire crews is necessary to preserve life and safety of responders and the public, the [PROVIDER] shall not be responsible for any losses as a result of strategies and tactics implemented to preserve responder and public safety."

### ADMINISTRATION / RECORD KEEPING

1 "The First Nation shall retain in its administration records: a) copies of all plans of existing buildings; b) copies of those plans that have been approved for all proposed buildings; c) copies of plans that have been approved for all additions to existing buildings.; d) copies of fire hydrant maintenance and inspection records."

2 "The First Nation shall notify the [PROVIDER] of any inspection reports and orders that are issued to the occupants or owners of any buildings on the lands as they occur."

### COMPLIANCE WITH OTHER REGULATIONS

1 "The First Nation shall take such steps as are necessary to ensure that the manufacture, storage, transportation, display and sale of high hazard fireworks as defined in the Canada Explosives Act and Regulations that take place on the lands shall conform to the Canada Explosives Act and Regulations, as amended from time to time, and to all applicable provincial enactments and regulations now in force or in force hereafter."

# 6.0 | RATES & PAYMENT

## what it is

Clearly states the cost of service (rates) and procedures for payment.

## why it's important

- It explains how costs are determined.
- It allows for budgeting.
- It clarifies the process for invoicing and payment.

## key decisions

**RATES**

- What is the structure of the rate for service? How is the total charge calculated?
  - Flat rate
    - Per building
    - Area as whole
    - Per call
    - Inspection (fee for service)
  - Formula (percentage of total service area)
    - Number of building
    - Assessed value
    - Operating budget
- What is included in the rate?
  - On-call retainer
  - Cost per response
  - Costs for operations, maintenance, and repair of equipment
  - Capital costs of improving the system

## key decisions

- Are there additional costs not included in the regular service rate?
  - Capital costs of system improvements (if not included in the regular rate)
  - Fee for service items (e.g. fire prevention, training, etc.)
- How does the rate compare with similar municipal users?
- Will fees stay the same for the duration of the agreement or will they be revised during the term of the agreement?
- What is the process for updating rates during the term of the service agreement?

**PAYMENT**

- When is invoicing to occur?
  - Monthly
  - Quarterly
  - Annually
- When must payment be received?
  - 30 days
  - Other
- How must payment be made?
  - By cheque
  - Electronically

## key considerations

- The rate structure for fire protection services can vary. Rates are generally calculated based on the number of buildings on in the lands covered by the agreement. However, some agreements might outline different charges for different types of buildings or the charges might be calculated based on the percentage of total or estimated assessed value of buildings in the fire service area. These 'formula-based' rates are

## key considerations

more common in fire service agreements than in other service agreements.

- Flat rates allow for predictability of costs and revenues for both parties.
- Capitals costs are additional fees that municipalities charge to cover the costs of new fire halls, vehicles, or equipment (i.e. beyond the day-to-day costs of providing the services).
- Capital costs may be included in the rate, may be additional, or may not be charged at all. It is important for this to be clear in the agreement.
- Capital costs are not funded through the MTSA subsidy from Indigenous and Northern Affairs Canada, and should be included in the First Nation Infrastructure Investment Plan if funding is requested.
- Note that rates and capital costs may not be the only costs involved [see Section, Roles & Responsibilities].
- Specific rates are often included in a schedule to the contract, to allow for easy updates.

## example contract terms

**FLAT RATE (PER BUILDING / UNIT)**

1 "The First Nation shall pay to the [PROVIDER] an annual [UNIT TYPE] charge in an amount equal to $___ per unit within thirty (30) days of receipt of an invoice from the [PROVIDER]."

2 "The building fee shall be the following sum per month per building effective April 1 2016 - September 1st 2016 to August 31st 2017: $___ per month per building ($___.00 per annum)."

## example contract terms

### FORMULA BASED RATE (% OF SERVICE AREA)

1 "The amount to be invoiced shall be the amount derived from the following formula: ""BB/TB x Cost"" Where: BB = the number of and Buildings reported to the [PROVIDER] under this Agreement, or the [PROVIDER]'s estimate of that number if the First Nation has not so reported; TB = the total number of buildings, whether occupied or not, within the Fire Protection Service Area ; Cost = the amount identified in the [PROVIDER]'s annual budget for fire protection."

### CAPITAL COSTS

1 "The First Nation shall pay the [PROVIDER] a Capital Cost Contribution of the annual fees of $___ per [UNIT TYPE], with payment to be made in five (5) equal installments during the Term of the Agreement, payable within thirty (30) days of receipt of an invoice from the [PROVIDER]."

### PAYMENT / INVOICING

1 "In consideration of the [PROVIDER] providing Firefighting Services for all buildings on the lands, the First Nation agrees to pay the Firefighting fee to the [PROVIDER] by the tenth (10) day of each month following receipt of the invoice from the [PROVIDER]."

2 "The [PROVIDER] shall invoice the First Nation annually on July 1st and the First Nation agrees to pay the annual fee within thirty 30 days of the receipt by the First Nation of the invoice from the [PROVIDER]."

# 7.0 | SUSPENSION & TERMINATION

## what it is

Suspension and termination terms identify the conditions and procedures for temporarily stopping services (suspension) or ending an agreement before the end of its term (termination).

## why it's important

- It allows parties to take action if agreement terms are not met.
- It makes the suspension or termination process clear and fair to both parties.

## key decisions

- Who can suspend or terminate the agreement?
  - First Nation (only)
  - Service provider (only)
  - Either party
- Under what conditions can services be suspended?
  - With cause (failure to meet terms of agreement)
    - What are the conditions? (e.g. failure to meet roles and responsibilities)
  - Without cause (one party no longer wants to receive / provide services)
- Under what conditions can services be terminated?
  - With cause (failure to meet terms of agreement)
    - What are the conditions? (e.g. failure to meet roles and responsibilities)
  - Without cause (one party no longer wants to receive / provide services)
- What are the procedures for suspension / termination?
  - What type of advanced notice is required prior to termination of the agreement?
    - 60 days
    - 120 days
    - Other
  - How is notice given?
    - [see Section 8, Notification]

## key considerations

- Suspension provides an opportunity for the violating party to correct the issue(s) and preserve the agreement. It serves as an intermediate step between service provision and termination.
- It is important that the conditions and procedures for suspension and termination are clearly defined and that advanced notice required to ensure the party in violation has an opportunity to either remedy the issue (if in violation) or make alternative arrangements (if service is still required).
- Suspension and termination require sufficient notice be provided, as per the terms of the agreement. The process for notification is outlined in Section 8, Notification.
- The period of advanced notification prior to termination typically increases based on how long it would reasonably take to make alternate arrangements for service provision.
- Termination clauses should identify if capital contributions or rates paid in advance will be reimbursed on a pro-rated basis.

## example contract terms

### SUSPENSION

1 "Should the [PROVIDER] fail to perform any covenant or condition to be performed by it pursuant to this Agreement, the [PROVIDER] will as soon as possible after the date of receipt of notice in writing from the First Nation of such breach, rectify the breach. Should the breach not be rectified within sixty (60) days after the receipt of such notice, the First Nation may discontinue the payment of services until such time as the default is rectified."

2 "Should the First Nation fail to perform any covenant or condition to be performed by them or fail to make any payment required to be made under this Agreement, the First Nation will, as soon as possible after the day of notice in writing from the [PROVIDER] of such breach, rectify the breach. Should the breach not be rectified within sixty (60) days after the receipt of such notice, the [PROVIDER] may at its option discontinue the provision of fire protection services until such time as the default is rectified, which would include payment in full by the First Nation of any outstanding amounts together with interest on any balance from time to time owing at the set rate."

### TERMINATION (NOTIFICATION / PROCEDURES)

1 "This Agreement may be terminated upon 3 months of written notice by either Party."

2 "Notice of termination of this Agreement shall be provided prior to June 30th to take effect December 31st of the same year."

3 "This Agreement may be terminated by either party by giving not less than one (1) years' written notice to the [PROVIDER]."

4 "If the First Nation terminates the Agreement, a pro-rated portion of the annual service fee and capital contribution will be repaid by January 31st following termination."

# 8.0 | NOTIFICATION

## what it is

Notification outlines when each party needs to contact one another and the procedures for doing so.

## why it's important

- It ensures clear communication between parties and a written record of key decisions, changes, issues, etc.

## key decisions

- Under what conditions is notice required?
  - Changes in service area [see Section 3, Service Area]
  - Invoicing [see Section 5, Roles & Responsibilities]
  - System issues or service interruptions (e.g. malfunctioning hydrants)
  - Renewal [see Section 2, Renewal Terms]
  - Violations
  - Suspension or termination of services [see Section 7, Suspension and Termination ]
  - Other
- How must notice be given?
  - In person
  - Mail
  - Email
- At what point is notice assumed to have been received?
  - Upon confirmed delivery
  - 5 business days after mailing
  - Other

## key considerations

- It is important that all agreements have clear notification provisions.
- Please refer to other relevant sections (Section 5, Roles & Responsibility; Section 7, Suspension & Termination; Section 2, Renewal Terms, etc.).

## example contract terms

1 "No amendment of or departure from the terms and conditions of this Agreement will become effective unless evidenced in writing and signed by both parties."

2 "The First Nation shall notify the [PROVIDER] of any inspection reports and orders that are issued to the occupants or owners of any buildings on the lands as they occur."

3 "The First Nation shall immediately notify the [PROVIDER] in writing of any malfunctioning fire hydrants."

4 "Except as otherwise specifically provided for in this agreement, whenever it is required or desired that either party shall deliver or serve a notice, invoice or payment on the other, delivery or service shall be deemed to be satisfactory and deemed to have occurred when:

i. That party has been served personally, on the date of service; or

ii. Mailed by prepaid mail, on the date received or on the fifth business day following receipt of the mailing by any Canada Post Office, whichever is the earlier, provided that in the event of interruption of mail service, notice shall be deemed to be delivered only when actually received by the party to whom it is addressed, so long as the notice is addressed as follows:

To the First Nation: [Insert mailing address]

To the Service Provider: [Insert mailing address]"

# 9.0 | GROWTH & DEVELOPMENT

## what it is

Growth and development establishes the conditions under which additional units, buildings, and areas can be added to the service agreement.

## why it's important

- It identifies a process for figuring out if the growth and development can be serviced with the existing system, or if additional capacity is required.
- It helps both parties plan for the future.
- It ensures that future buildings, residents, or areas in the community receive the services they need.

## key decisions

- Does your community anticipate future growth and development that might require fire protection services? What type of growth or development? Will it be similar to what currently exists or different? When will it likely occur?
- Can the service provider accommodate additional growth and development? How much additional service can be provided – are there limits?
- Will existing terms (i.e. rates, requirements) remain the same for new units / buildings / areas or will they be different?
- What is the process for requesting additional services?
  - How much advanced notification is required by the First Nation to inform the service provider that additional service is required?
  - What information does the service provider require to make a decision? How long does the service provider have to respond?
  - Under what conditions may the service provider refuse or limit additional service?
  - Under what conditions may the First Nation contract a new or additional provider to meet its increased needs?

## key considerations

- Minor growth and development of existing uses within an existing service area is likely to be accommodated.
- Accommodating major growth and development of existing uses or new types of uses may be more difficult to accommodate and may require a new or renegotiated agreement, or a separate agreement for a capital contribution towards system expansion.
- When the service area is changed, the maps or lists of addresses in your agreement will need to be updated.

## example contract terms

1 "The First Nation shall advise the [PROVIDER] of any planned growth or development, so that the [PROVIDER] can assess the ability to provide services and update the service area in the service agreement."

2 "If the proposed development cannot be serviced with the existing system, the First Nation is responsible for system upgrades required to provide additional service. The service area of the agreement will not be updated until system upgrades are completed."

# 10.0 | DISPUTE RESOLUTION

## what it is

Dispute resolution establishes a process and procedure for dealing with a disagreement between the parties.

## why it's important

- Helps ensure that disagreements are resolved in a fair and balanced manner, so that both parties may move forward.
- Good dispute resolution processes can resolve the issue and maintain a working relationship between parties.
- Identifies how costs of dispute resolution will be allocated.

## key decisions

- What type dispute resolution process is to be used?
- What are the procedures / timeline?

## key considerations

- Dispute resolution terms are important to ensure a strong, clear, and functional agreement.
- An Alternate Dispute Resolution method is recommended, as it leaves litigation as a last resort and is more likely to maintain a good working relationship between the parties.

## example contract terms

1 "In the interest of cooperative and harmonious co-existence, the parties agree to use their best efforts to avoid conflict and to settle any disputes arising from or in relation to this Agreement."

2 "In the event that the parties fail to resolve matters, the parties shall seek a settlement of the conflict by utilizing Alternate Dispute Resolution (ADR) Method, and recourse to the Courts shall be a means of last resort, except when public health or safety is concerned."

3 "In the event that a conflict is settled by mediation the costs of mediation, the fees and reasonable expenses of the project mediator and any reasonable expenses associated with the conduct of the mediation, shall be shared equally by the parties."

4 "In the event that a conflict is settled by arbitration, the arbitrator shall fix the costs of the arbitration in the final award, which costs may include, but are not limited to, the following:

i. the fees of the arbitrator;
ii. any necessary and reasonable expense incurred by the arbitrator to fulfill the arbitrator's functions;
iii. the fees and other necessary reasonable expenses of;
iv. the experts appointed by the arbitrator; and
v. the witnesses, as approved by the arbitrator;
vi. any necessary and reasonable fees, charged or expenses for providing services to the arbitrator or the parties in connection with the arbitration."

5 "Except for the costs of legal fees and legal expenses of the successful party, the costs of arbitration shall be borne by the unsuccessful party unless the arbitrator considers it appropriate in the circumstances to apportion them between the parties."

# 11.0 | COMMUNICATION

## what it is

The Communication clause states how the parties will continue to formally communicate throughout the life of the service agreement.

## why it's important

- Pro-actively planning to meet regularly (once or twice a year) helps to:
  - Build a working relationship between parties,
  - Provide an opportunity to coordinate activities,
  - Pro-actively address issues, and
  - Identify practical areas for collaboration.
- Formalizing the commitment to communicate makes sure that it's documented and carried on throughout changes in staff or leadership at either organization.

## key decisions

- Who should be meeting?
  - The Fire Chief or Deputy Fire Chief
  - Operational level staff
  - Administration
  - Elected officials
- How often should they be meeting?
  - Once a year
  - Twice a year
  - More frequently

## key decisions

- What will they discuss?
  - General update on administration of the service agreement (Are roles and responsibilities being met? Invoices being paid?)
  - Coordination of major maintenance activities
  - Potential upcoming issues or risks, including accessibility issues
  - Future growth and development, and the impact on services
  - Updates to service areas
  - Updates to rates
  - Bigger picture opportunities for collaboration
- Is designation of a formal committee required? (e.g. a Fire Protection Committee)
  - Yes
  - No
- If yes, what is the mandate of the group?
  - Discuss issues and make recommendations to decision makers
  - Make decisions

## key considerations

- Communication commitments at a government-to-government level are often documented in a Memorandum of Understanding or Government-to-Government agreement, rather than in a service agreement.
- Including a formal commitment to communicate in your service agreement does not replace the need for more frequent, day to day communication as issues come up at an operational level.
- The service agreement may indicate the intent to communicate and reference a separate communication protocol.

## example contract terms

1. "All the Parties to this agreement will appoint one or more representatives, with notice to the other Parties of such appointments as the principal contacts for official communications about this Agreement, and as the principal contacts for operational matters pursuant to this Agreement."

2. "The Parties further agree to establish a communications protocol to manage issues arising under this Agreement."

3. "The First Nation and the Municipality shall create a Utility Council. Membership shall consist of two staff members from each organization."

4. "The Parties shall meet at least once a year."

5. "The agenda for meetings shall include, at a minimum:
   - Operational issues
   - Levels of service
   - Contract administration
   - Any potential updates to contract schedules
   - Infrastructure upgrades that may impact the service agreement"