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STAFF REPORT

TO: Council

FROM: Erin Hartley, Director of Corporate Services

APPROVED BY: Trudy Payne, Chief Administrative Officer

DATE: September 28, 2020

SUBJECT: Internal Memo – Town of Shelburne Fire Services Agreement

ORIGIN

Request from Council to draft an Internal Memorandum of Understanding to explain the Municipality’s position on capital vs. operating expenditures in the Fire Services Agreement with the Town of Shelburne

RECOMMENDATION

THAT Council of the Municipality of the District of Shelburne approve the attached Internal Memo regarding the Town of Shelburne Fire Services Agreement as its position in relation to capital vs. operating expenditures in the Agreement.

DISCUSSION

Staff are consulting with the Town of Shelburne to clarify a number of points in the Fire Services Agreement we currently have in place.

Until amendments are agreed upon, the Fire Services Agreement is enforceable as it currently stands. In order to provide continuity and clarification regarding Municipal Council’s position on capital vs. operational expenditures as outlined in the Agreement, especially as it relates to implementing an area rate on residents, the attached Internal Memo has been created.

Staff provided the draft memo to our Solicitor and received the following response:

I have no problem with the interpretations offered in the internal memo and can confirm that they would withstand the court's scrutiny.

Staff will continue to work with the Town of Shelburne to reach a decision on amendments to our Fire Services Agreement, but in the meantime this internal memo will act as the Municipality of Shelburne's position if approached by the Town for contributions towards a capital expenditure.

ATTACHMENTS

- Internal Memorandum of Understanding – Fire Services Agreement with the Town of Shelburne
- Fire Services Agreement with the Town of Shelburne



MUNICIPALITY OF THE DISTRICT OF SHELBURNE
INTERNAL MEMORANDUM OF UNDERSTANDING
FIRE SERVICES AGREEMENT WITH TOWN OF SHELBURNE
CAPITAL VS. OPERATING EXPENDITURES

DATE: September 28, 2020

PURPOSE: To clarify eligible items related to capital vs. operating expenditures in relation to the Municipality of Shelburne's Fire Services Agreement with the Town of Shelburne.

This Fire Services Agreement does not reference the Municipality's Area Rates for Fire Departments Policy, this memorandum outlines the Municipality's position on the definition of capital expenditures eligible for an Area Rate in the Town of Shelburne's fire service area.

DETAILS: The Town of Shelburne and Municipality of Shelburne's Fire Services Agreement dated April 1, 2018 includes information related to capital and operational expenses that shall be interpreted in the following manner:

1. Clause - 11 (a) Major Capital Expenditures of the Fire Department shall include the purchase of fire trucks and other capital assets.

Interpretation – "and other capital assets" shall be limited to other fire vehicles such as boats, ATVs, etc. All other items shall fall under operating expenditures.

2. Clause – 9 (a) Net operating costs of the Fire Department shall include all costs associated to equipment costs, workers compensation premiums, volunteer force allowance, fire alarm dispatch services, training costs, utility and operating costs associated to the Fire Station portion of the building (such as water, power, fuel and insurance) but shall not include the net vehicle costs (see article 10) or any costs associated with the Community Centre portion of the building and any costs associated to janitorial services (wages and benefits).

Interpretation – “all costs associated to equipment costs” shall include any purchases other than fire vehicles, including radios, bunker gear, compressors, etc. and shall therefore not be eligible for an area rate.

OUTCOME: The Municipality of Shelburne shall not charge an area rate to residents of the Town of Shelburne fire service area for anything other than fire vehicles.

Dated this ____ day of _____, 2020

TRUDY PAYNE, CHIEF ADMINISTRATIVE OFFICER

ERIN HARTLEY, MUNICIPAL CLERK

THIS FIRE SERVICES AGREEMENT made this 1st day of April, 2018.

BETWEEN:

TOWN OF SHELBURNE, a municipal body corporate
(hereinafter referred to as the "Town")

and

MUNICIPALITY OF THE DISTRICT OF SHELBURNE, a municipal body corporate
(hereinafter referred to as the "District")

WHEREAS:

The District has requested the Town to provide, pursuant to Sections 60, 61 and 293-301 of the *Municipal Government Act*, fire protection services to specific areas located outside the Town but within the boundaries and jurisdiction of the District; and

The Town has agreed to provide certain fire protection services to those specific areas of the District on the terms hereinafter set forth.

THE PARTIES THEREFORE AGREE AS FOLLOWS:

1. The Town shall provide certain fire protection services through the Shelburne Volunteer Fire Department as outlined in Schedule "A" attached to specific areas of the District throughout the life of this agreement.
2. The said fire protection services shall be provided within an agreed fire protection area which is restricted geographically to the entirety of Birchtown, Hartz Point, Reid's Hill, Upper Clyde River, Welshtown, Lower Ohio, Sandy Point, Lower Sandy Point, McNutts Island, Lower Jordan Bay, Jordan Bay, Jordan Ferry, Woodlawn, Jordan Branch, Clyde River, Beaver Dam, Quinns Meadow and being more specifically described on a map attached as Schedule "B".
3. The parties agree that the Town is not an agent of the District, that its personnel are not employees of the District and that the relationship covered in this agreement is that of an independent contractor providing a service for a fee.

THE TOWN SHALL:

4. Provide and maintain fire and emergency services, as outlined in Schedule "A" to the District without interruption;
5. Ensure that it is equipped at all times with adequate firefighting equipment, apparatus and appropriately trained personnel for the provision of fire protection services to the fire protection district in accordance with the levels specified in Schedule "A";
6. Operate in accordance with the Nova Scotia Occupational Health and Safety Act and the rules and regulations established by that Act for the workplaces involved;

7. Provide other emergency response services to the fire protection district in accordance with the type and level specified in Schedule "A"; and
8. On May 1st of each year, the Town shall provide the District with a summary of its prior year activities including operating and capital and its current year fire protection budget for operating and capital. Also, the Town will provide incidents reports, activity reports and other information as requested by the District within a reasonable time frame.

COST SHARING

9. (a) Net operating costs of the Fire Department shall include all costs associated to equipment costs, workers compensation premiums, volunteer force allowance, fire alarm dispatch services, training costs, utility and operating costs associated to the Fire Station portion of the building (such as water, power, fuel and insurance) but shall not include the net vehicle costs (see article 10 below) or any costs associated with the Community Centre portion of the building and any costs associated to janitorial services (wages and benefits).

(b) Net operating costs of the Fire Department shall be calculated and included in the Audited Financial Statements of the Town and shareable by the Town and the District based on a previous fiscal three-year rolling average of the percentage of the number of calls within the Fire Protection Area. The number of calls shall not include calls for Mutual Aid and calls from NS Department of Natural Resources.

(c) The formula for the sharing of the net operating costs shall be as set out in Schedule "C" (attached) and shall include:

- i. the call statistics including the total number of calls in the three preceding fiscal years and the total number of calls within the Fire Protection Area in that same time period;
- ii. the percentage of the total number of calls that are attributable to the District;
- iii. the Net Operating Costs itemized by category in the same manner as stated in the Audited Financial Statements of the Town; and
- iv. the percentage and the total of the Net Operating Costs that are to be paid by the District.

10. (a) Net vehicle costs shall include all costs associated to gas and diesel fuel, insurance, vehicle and vehicle equipment repair and maintenance, and communication equipment repair and maintenance.

(b) The Net Vehicle Costs of the Fire Department shall be calculated and included in the Audited Financial Statements of the Town and shareable by the Town and the District based on a three-year rolling average of the kilometers driven during the previous three years within the Fire Protection Area. The number of kilometers shall not include calls for Mutual Aid and calls from NS Department of Natural Resources:

(c) The formula for the sharing of the Net Vehicle Costs shall be as set out in Schedule "C" (attached) and shall include:

- i. the total number of kilometers driven;
- ii. the total number of kilometers driven within the Town;
- iii. the total number of kilometers driven within the District;
- iv. the percentage of the total number of kilometers driven that are attributable to the District;
- v. the net vehicle costs itemized by category in the same manner as stated in the Audited Financial Statements of the Town; and
- vi. the total of the net vehicle costs that are to be paid by the District.

11. (a) Major Capital Expenditures of the Fire Department shall include the purchase of fire trucks and other capital assets.

(b) Major Capital Expenditures shall be shareable by the Town and the District based on a 50/50 split.

(c) The amount of Major Capital Expenditures shareable by the Town and the District shall be reduced to reflect any contributions and donations received by the Town and Fire Department for each capital expenditure.

(d) The Town shall annually provide the District with a projected 20-year major capital replacement timeline for Fire Protection together with any revisions by January 31st in order for the District to adequately plan for providing its share of the Major Capital Expenditure.

(e) The Town and the District agree that the Major Capital Assets remain the property of the Town.

12. (a) The Town shall invoice the District annually by June 30th for its share of the Net Operating Costs and Net Vehicle Costs and the District shall contribute its share of the Net Operating Costs and the Net Vehicle Costs annually by July 31st.

(b) The Town shall invoice the District for its share of Major Capital Expenditures in the fiscal year acquired and the District shall contribute its share of Major Capital Expenditure Costs within thirty (30) days of receiving invoice. Any Major Capital Expenditures acquired from April 1, 2018 to signing by both parties of this agreement will be due by the end of July, 2020.

13. The Town shall bring to the District's attention any over-budget items greater than twenty five percent (25%).

14. In the event a request is made by the Town for the construction of dry hydrants or fire access roads within the fire protection area, it shall be the District's responsibility to determine whether they are constructed and the cost for same shall be borne by the District. The District approval shall not be unreasonably withheld.

INDEMNIFICATION

15. Each party, as applicable, will indemnify and hold harmless the other party and its directors, officers, employees, agents and representatives from and against any direct damages, injuries, losses and other liabilities claimed against the indemnitee, and all related costs and expenses, including reasonable legal fees on a solicitor and his own client full indemnity basis, suffered or incurred by the indemnitee in relation to any claims, cause or causes of action, action or actions, suits or proceedings by a third party, which arises from damage to property or injury to or death of persons resulting from the indemnitor's failure to perform its obligations under this agreement, which failure is caused by the negligence or willful act of the indemnitor or any of its directors, officers, employees, agents or representatives, acting within the scope of their authority or employment. The indemnity under this clause will be limited to an amount in proportion to the degree to which the indemnitor or any of its directors, officers, employees, agents or representatives, acting within the scope of their authority or employment, are at fault.
16. The provisions of the above indemnity clause shall survive the expiry or termination of this agreement.

INSURANCE

17. The Town shall, through appropriate insurance coverage as addressed below, protect itself from and against all claims that might arise from anything done or omitted to be done under this agreement by the Town, or by the personnel of the Town, and more specifically, from and against all claims that might arise from anything done or omitted to be done under this agreement where bodily injury, including personal injury, death or property damage, including loss of use thereof, is caused; except where such liability arises out of the negligence of the District or by its officers, employees, agents, assigns, independent contractors and subcontractors.
18. For the purposes of the foregoing and without restricting the generality of that clause, the Town shall maintain in full force and effect during the term of this agreement, at its own expense, a policy of comprehensive general liability insurance, in form and substance acceptable to the District, providing coverage for a limit of not less than five million dollars (\$5,000,000) for each occurrence of a claim of bodily injury, including personal injury, death or property damage, including loss of use thereof, that may arise directly or indirectly from the acts or omissions of the Town, or of the personnel of the Town, under this Agreement.
19. The insurance policy referred to above shall include the following terms:
 - a) A clause that adds the District, and its officers, employees, agents, assigns, as additional insureds; limited, however, to the terms of this agreement;
 - b) A cross-liability insurance clause endorsement acceptable to the District;
 - c) A clause requiring the insurer to provide thirty (30) days prior written notice to the District in the manner set forth in the insurance policy in the event of the termination, expiry, variation or non-renewal of the policy;
 - d) A clause which results in the inclusion of coverage for liability arising out of contract or agreement.

20. The Town shall submit annually to the District proof of the insurance coverage in the form of a certificate and a copy of the relevant portion or portions of the insurance policy incorporating the terms and clauses referred to in this clause.

21. The District shall also add the Town as additional insured to District Liability policy in the amount of five million dollars (\$5,000,000) as per #18 and #19.

TERM

22. The term of this agreement is five years, beginning April 1, 2018 until March 31, 2023. It shall renew automatically for an additional five years unless written notice is delivered by one party to the other as noted below.

23. Each party may withdraw from this agreement effective the end of any given fiscal year, provided that written notice has been provided to the other party no less than one year prior to the intended withdrawal date. Upon the expiration of any such notice period, this Agreement shall be of no further force or effect and the District shall pay to the Town, its pro rata share for all services performed to the date of termination.

GENERAL TERMS

24. This Agreement is at-will and may be modified by mutual consent of authorized officials from the Town and the District. This Agreement shall become effective upon signature by the authorized officials from the Town and the District and will remain in effect until modified or terminated by any one of the partners by mutual consent. In the absence of mutual agreement by the authorized officials from the Town and the District, this Agreement shall end on March 31, 2023.

25. In the event that the parties fail to resolve, amongst themselves, any dispute relating to the provisions of this Agreement, the parties shall seek a settlement of the conflict by the following processes:

- a) First, the parties shall submit their dispute to mediation;
- b) If the parties are unable to reach a mediated agreement, the matter shall be referred to arbitration pursuant to the provisions of the *Commercial Arbitration Act* of the Province of Nova Scotia.

26. For the purpose of service of notice, the address of the Town shall be as follows:

Chief Administrative Officer
168 Water Street
PO Box 670
Shelburne, Nova Scotia
BOT 1W0

For the purpose of service of notice, the address of the District shall be as follows:

Chief Administrative Officer
136 Hammond Street
PO Box 280
Shelburne, Nova Scotia
B0T 1W0

27. This Agreement shall be construed and enforced in accordance with the laws of the Province of Nova Scotia and the parties hereto irrevocably attorn to the exclusive jurisdiction of the courts of such Province.
28. In this Agreement, the term "year" means the fiscal year, being the period between April 1st to March 31st.
29. The invalidity or unenforceability of any provision of this Agreement will not affect the validity or enforceability of any other provision hereof and any such invalid or unenforceable provision will be deemed to be severable.
30. No amendments, waiver or termination of this Agreement will be binding unless executed in writing by the parties to be bound hereby. No waiver of any of any provision of this Agreement will be deemed or will constitute a waiver of any other provision, nor will any such waiver constitute a continuing waiver unless expressly provided.
31. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.
32. In the event of a conflict between this agreement and the *Municipal Government Act*, the latter shall prevail.

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

SIGNED, SEALED AND DELIVERED)

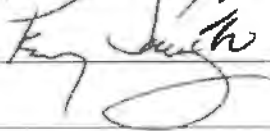
In the presence of:

TOWN OF SHELBURNE



CAO

MUNICIPALITY OF THE DISTRICT
OF SHELBURNE



SCHEDULE "A"

The Municipality of the District of Shelburne

Application for Registration as a Fire and Emergency Services Provider

Applicant: Town of Shelburne Volunteer Fire Department

Contact Person: Darren Shupe, CAO and Darrell Locke, SVFD Fire Chief

Phone/Email: Darren Shupe, CAO 902-875-2991 ext 5 (cao@town.shelburne.ns.ca)
Darrell Locke, SVFD Fire Chief 902-875-7685 (shelburnefire@gmail.com)

Mailing Address: PO Box 670, Shelburne NS B0T 1W0

Incorporated under: Town of Shelburne

1. Attach proof of insurance coverage AND advise on the following details:

Motor vehicle liability policy limits: \$10,000,000.

General liability insurance policy limits: \$10,000,000.

Insurance policy period: June 1st to May 31st

Insurer: Arthur J. Gallagher Canada Ltd - Frank Cowan Company Ltd.

2. Describe boundaries of service territory:

Boundaries and service territory as described in Fire Service Agreement between Town of Shelburne and Municipality of the District of Shelburne.

3. Please indicate the service that the department will provide and the level of service by placing an X in the appropriate box. N/A denotes a service not being provided by the Applicant.

SUBJECTS

CATEGORY OF SERVICE LEVEL

a. Fire and Fire Related Emergencies	Structural <input checked="" type="checkbox"/>	Defensive <input type="checkbox"/>	N/A <input type="checkbox"/>	
b. Medical Emergencies	Registered First Responder <input checked="" type="checkbox"/>	Medical Assistance <input type="checkbox"/>	N/A <input type="checkbox"/>	
c. Vehicle Rescue	Technician <input checked="" type="checkbox"/>	Operational <input type="checkbox"/>	Awareness <input type="checkbox"/>	N/A <input type="checkbox"/>

- | | | | | |
|--|-------------------------------------|---|---|------------------------------|
| d. Water Rescue | Technician <input type="checkbox"/> | Operational <input checked="" type="checkbox"/> | Awareness <input type="checkbox"/> | N/A <input type="checkbox"/> |
| e. Ice Rescue | Technician <input type="checkbox"/> | Operational <input checked="" type="checkbox"/> | Awareness <input type="checkbox"/> | N/A <input type="checkbox"/> |
| f. Structural/Excavation Collapse | Technician <input type="checkbox"/> | Operational <input type="checkbox"/> | Awareness <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| g. High Angle Rescue | Technician <input type="checkbox"/> | Operational <input type="checkbox"/> | Awareness <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| h. Hazardous Materials | Technician <input type="checkbox"/> | Operational <input type="checkbox"/> | Awareness <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| i. Ground Search & Rescue | Provider <input type="checkbox"/> | Assistance <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> | |

4. Please note any other man-made and natural disasters not mentioned above for which the applicant has the training, equipment and command system to undertake.

5. Are there any limits (other than what has already been identified) on the level of service that can or will be provided by the applicant in respect to any of the subjects listed above? If so, please indicate:

6. Does the applicant have the equipment to perform the services checked above?

Yes No

7. Does the applicant have the training or experience necessary to perform the services checked above?

Yes No

8. Is the applicant a Mutual Aid Emergency Service Provider to this Municipality?

Yes No

If Yes, please indicate the municipal unit in which the applicant is located: Town of Shelburne

9. APPLICANT

MUNICIPALITY

Date

Date of Approval of Registration Application

Signature of Applicant

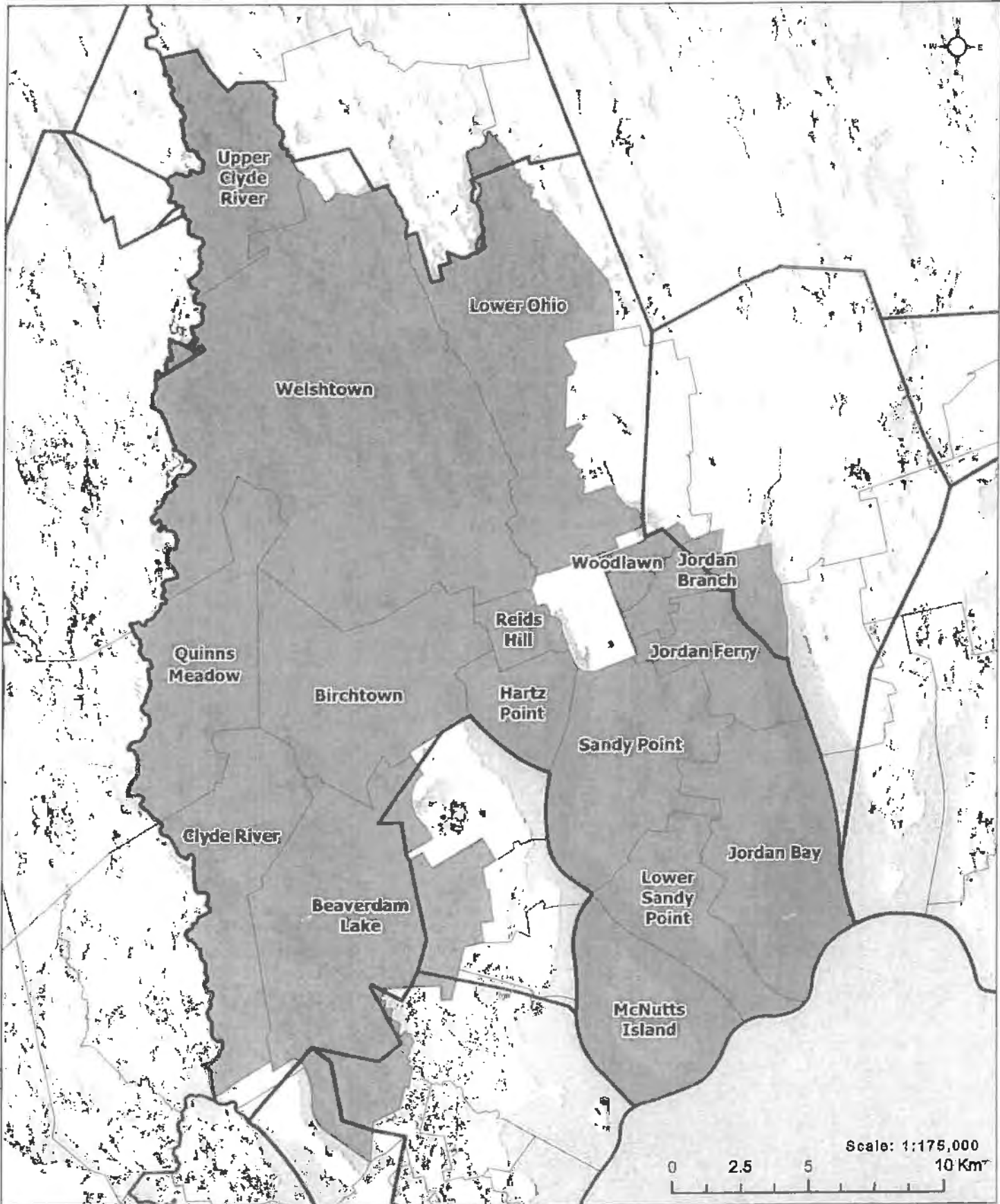
Date

Signature of Related Body Representative
(such as Fire Commission, if applicable)

Signature of CAO or designate

Please note: Explanation of the terminology used in this registration form is provided in the Information from the Office of the Fire Marshal included as Addendum "B" in the Guide Respecting Fire and Emergency Services in the *Municipal Government Act* Resource Binder, a copy of which is available from the Municipality of the District of Shelburne upon request. To register, a department must be incorporated and hold any valid liability insurance that is required by municipal policy. The department must operate on a not-for-profit basis. The registration does not make the department an agent of the Municipality of the District of Shelburne. This registration may be modified by applying to the municipality for a change in registration status. Municipality of the District of Shelburne may revoke this registration for cause.

Municipality of Shelburne
Fire Districts - October 2018 (Schedule "B")



Schedule C - Fire Services Calculaitons Part 1

Net Operating costs shareable by the Town and District based on a previous three fiscal year average of the percentage of number of calls with the fire protection area

	2014/15	2015/16	2016/17	Average	%
CALLS WITHIN TOWN OF SHELBURNE	56.0	46.0	36.0	46.0	0.58
CALLS WITHIN MDS	26.0	26.0	49.0	33.7	0.42
TOTAL CALLS	82.0	72.0	85.0	79.7	1.00

Operating Costs: March 31, 2017	Audited
Workers Comp(GL#1.2.22.4100)	4,120.43
Vol Force Allowance(GL#1.2.22.4200)	5,441.01
SVFD-Bunker Gear,etc(GL#1.2.22.4210)	20,000.00
Fire Alarm Dispatch(GL#1.2.22.4300)	1,200.00
Training(GL#1.2.22.4600)	73.81
Fire Station(lights,fuel,etc)(GL#1.2.22.4700)	21,707.24
Fire Station(Water & Ins)(GL#1.2.22.4710)	8,762.36
Mtc of Boat(GL#1.2.22.4811)	3,174.89
Truck Radio Equipment(GL#1.2.22.4820)	2,554.94
	67,034.68
42% to be shared by MDS	\$ 28,154.57

Vehicle costs including gas and oil, insurance and vehicle repair and maintenance shareable by the Town and District based on previous three fiscal year average of the percentage of kms driven within the fire protection area

	2014/15	2015/16	2016/17	Average	%
Average KMS	982.4	906.2	1,957.6	1,282.1	0.73
KMS WITHIN TOWN OF SHELBURNE	528.7	562.2	351.1	480.7	0.27
KMS WITHIN MDS	1,511.1	1,468.4	2,308.7	1,762.7	1.00
TOTAL KMS					

Vehicle Expense: March 31, 2017	Audited:
Mtc of Truck Equipment(GL#1.2.22.4800)	9,383.33
Mtc of Trucks inc gas/diesel(GL#1.2.22.4810)	16,787.96
Truck & Equipment Insurance(GL#1.2.22.4910)	9,313.00
	35,484.29
73% to be shared by MDS	\$ 25,903.53

Net Operating/Vehicle Costs by MDS for 18/19 (based on the above calculations) \$ 54,058.10

Schedule C - Fire Services Calculaitons Part 1

Capital costs shareable by the Town and District
based on previous three fiscal year average of
the percentage of kms driven within the fire
protection area

Capital Costs: April 1, 2018 to March 31, 2019	Unaudited:
East Can Fire Truck	109,500.29
SVFD/SVFD Ladies Aux Contribution	(52,000.00)
Net Cost of Fire Truck	57,500.29
50% to be shared by MDS	\$ 28,750.15
Net Capital Expenditure by MDS for 18/19 (based on the above calculations)	\$ 28,750.15

SCHEDULE "C" - CALCULATIONS EXAMPLE (PART 2)

Town of Shelburne

Fiscal Year Period April 01,2017 To March 31,2018

FUND01 - TOWN GENERAL

Income Statement

Printed: 12:52:23PM 1/9/2019

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	<u>Full Budget</u>	<u>Actual</u>
EXPENSES		
GENERAL OPERATING EXPENSES	\$ 177,630.00	\$ 193,227.09
PROTECTIVE SERVICES	\$ 177,630.00	\$ 193,227.09
FIRE PROTECTION	\$ 177,630.00	\$ 193,227.09
01-2-22-4100 ADM - WORKER'S COMPENSATION	\$ 4,500.00	\$ 3,900.33
01-2-22-4200 FIRE (VOL FORCE ALLOWANCE)	\$ 5,600.00	\$ 5,350.33
01-2-22-4210 SVFD-BUNKER GEAR, ETC	\$ 20,000.00	\$ 20,000.00
01-2-22-4300 FIRE ALARM SYSTEMS-DISPATCH	\$ 1,200.00	\$ 1,200.00
01-2-22-4500 WATER SUPPLY AND HYDRANTS	\$ 71,480.00	\$ 73,731.00
01-2-22-4510 WATER SUPP & HYDTS-FIRE WELLS	\$ 250.00	\$ 1,801.22
01-2-22-4600 TRAINING	\$ 1,000.00	\$ 3,649.15
01-2-22-4700 FIRE STATION AND BUILDINGS	\$ 21,000.00	\$ 24,020.27
01-2-22-4710 FIRE STN-JANITOR, WATER, INS	\$ 14,500.00	\$ 15,217.21
01-2-22-4800 MAINTENANCE OF EQUIPMENT	\$ 7,500.00	\$ 9,983.81
01-2-22-4810 MAINTENANCE OF TRUCKS	\$ 15,000.00	\$ 21,280.29
01-2-22-4811 MTC. OF BOAT	\$ 2,000.00	\$ 437.93
01-2-22-4820 COMMUNICATION EQUIP-TRK RADIO	\$ 4,000.00	\$ 3,652.55
01-2-22-4910 TRUCK & EQUIPMENT INSURANCE	\$ 9,600.00	\$ 8,923.00
Total	\$ 177,630.00	193,227.09
Total	177,630.00	193,227.09
Total PROTECTIVE SERVICES	177,630.00	193,227.09
Total GENERAL OPERATING EXPENSES	177,630.00	193,227.09
Total EXPENSES	\$ 177,630.00	\$ 193,227.09
Surplus / (Deficit):	(\$ 177,630.00)	\$ (193,227.09)