



Municipality of the County of Kings

Request for Decision

TO	Council
PREPARED BY	Rob Frost, Deputy CAO Wendy Salsman, Director of Finance
MEETING DATE	October 2, 2018
SUBJECT	Fire Services Agreement with the Municipality of the District of West Hants

ORIGIN

- June 19, 2017 Rate Payers meeting - Hants Border - Avonport
- June 26, 2018 Rate Payers meeting - Hants Border - Avonport

RECOMMENDATION

That Council authorize the Mayor and CAO to execute the fire services Agreement with the Municipality of the District of West Hants as attached to the October 2, 2018 Request for Decision report.

INTENT

For Council to be aware of and approve the Agreement developed by administration of both Municipalities.

DISCUSSION

Since the dissolution of the Town of Hantsport, the Hantsport Volunteer Fire Department has become a department of the Municipality of the District of West Hants.

Among other aspects, the proposed Agreement is between the two municipalities; provides funding for fire department operating expenses through Kings' operating budget, and funds the fire department's capital expenditures through the levy of an area rate in accordance with Kings' Fire and Recreation Area Rates Policy, as amended from time to time; has a term of 10 years; details the obligations of West Hants; and has the allocation of net operating costs between the Parties based on a rolling average of the number of calls within each municipality. The draft Agreement also contains provisions that are of specific interest to the ratepayers, e.g., provision 11 allows the Municipality of West Hants to relocate equipment provided that a suitably related asset is in turn located in Hantsport, while provisions 18 and 19 require West Hants to separately maintain and report on the Hantsport Fire Department related operating, capital and reserve funds. The CAO and Deputy CAO met with the West Hants CAO on a number of occasions to refine the attached agreement. Legal counsel for both municipalities have also reviewed the attached draft.

In part, the timing of this report relates to Provincial Bill 55. Bill 55 proposes to consolidate the Municipality of the District of West Hants and the Town of Windsor into one Regional Municipality. In part the legislation states, "*12 Before the incorporation date, a municipal government shall not (b) enter into any lease, contract or commitment that has effect after, or a term extending beyond, March 31, 2020; except as authorized by the Co-ordinating Committee*". To avoid further delay would seem prudent to have the attached Agreement executed prior to enactment of Bill 55.



Municipality of the County of Kings

Request for Decision

At the last two area rate meetings, the Municipality made a commitment to the residents of Hants Border - Avonport that a fire services Agreement would be forthcoming.

FINANCIAL IMPLICATIONS

The Municipality of the County of Kings will be responsible for its portion of Net Shareable Operating Expenditures through Kings' general tax rates per the annual budgetary process, while Shareable Capital Expenditures will be subject to Kings' Fire and Recreation Area Rates Policy and the annual budgetary process.

COMMUNITY ENGAGEMENT

- Annual ratepayers meetings will be held with respect to Shareable Capital Expenditures.

ALTERNATIVES

- No alternatives are presented.

IMPLEMENTATION

- Attached agreement will be signed by Mayor and CAO if approved by Council.

APPENDICES

- Appendix A: Draft Agreement between the Municipality of the County of Kings and the Municipality of the District of West Hants.

APPROVALS

Scott Conrod, Chief Administrative Officer

Date: October 2, 2018

THIS AGREEMENT made this _____ day of _____, 2018

BETWEEN:

THE MUNICIPALITY OF THE COUNTY OF KINGS, a body corporate pursuant to section 7 of the Municipal Government Act, S.N.S., 1998 c. 18;

(hereinafter referred to as "**Kings**")

and

THE MUNICIPALITY OF THE DISTRICT OF WEST HANTS, a body corporate, pursuant to section 7 of the Municipal Government Act, S.N.S., 1998 c. 18;

(hereinafter referred to as "**West Hants**")

COLLECTIVELY THE PARTIES HERETO

WHEREAS section 60 of the Municipal Government Act provides for the delivery of municipal services on such terms and conditions as agreed by municipalities; and

WHEREAS section 293 of the Municipal Government Act allows municipalities to work with others to maintain and provide fire and emergency services; and

WHEREAS the parties hereto are desirous of providing fire and emergency services to the citizens and property owners situate in the Hantsport Fire District pursuant to Part X of the Municipal Government Act; and

WHEREAS Kings provides funding for fire department Operating Expenses through Kings' Operating Budget process, and funds fire department Capital Expenditures through the levy of area rates in accordance with Kings' Fire and Recreation Area Rates Policy, as

amended from time to time; and

WHEREAS West Hants provides funding for fire department Operating and Capital Expenditures through West Hants' Budget process;

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT, for and in consideration of the joint and several mutual covenants herein contained, and other valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties hereto mutually covenant and agree with each other as follows:

DEFINITIONS

1. In this Agreement:

a. "Act" means Municipal Government Act, S.N.S., 1998, c.18, as amended;

b. "Capital Asset" means an item with an acquisition cost of \$2,500 or more with an estimated useful life over five years including, but not limited to, such items as vehicles, apparatus, hoses, pumps, self-contained breathing apparatus (S.C.B.A.), and building renovations;

c. "Capital Reserve Account " means an account maintained by West Hants, in which funds are deposited and accumulated, and out of which funds can be expended exclusively for the purpose of acquiring Capital Assets for use by the Hantsport Fire Department in providing fire and emergency services in the Hantsport Fire District;

d. "Equipment" means fire suppressing equipment, emergency equipment and apparatus used by the Hantsport Fire Department in fighting fires or providing emergency services, including, but without limiting the generality thereof: vehicles, vehicular equipment and attachments;

e. "Fire Area Rate" means the rate levied on Kings' residents within the Hantsport Fire District, in accordance with Kings' Fire and Recreation Area Rates Policy, and which proceeds are used to fund Kings'

contribution to Shareable Capital Expenditures;

f. "Fire District" means the area in which the Fire and Emergency Services will be provided, consistent with the Hantsport Fire Departments registrations with Kings and West Hants pursuant to Section 294 (4) of the Act;

g. "Fire and Emergency Services" have the meaning ascribed to them in Part X of the Act;

h. "Fire Hall" means the building used for the purposes of storing fire apparatus and equipment located in or around, Hantsport, Nova Scotia;

i. "Mutual Aid Calls" means calls to and from other Fire Departments to render assistance, as outlined in the Municipality of Kings Mutual Aid Fire Fighting Agreement, as amended from time to time;

j. "Operating Account" means an account maintained by West Hants for the benefit the Hantsport Fire Department into which West Hants deposits the amounts approved annually by Kings' and West Hants' respective Councils, to fund the Shareable Operating Expenditures pertaining to the Fire and Emergency Services provided by the Hantsport Fire Department;

k. "Shareable Capital Expenditures" means expenditures for the purchase of Capital Assets for the benefit of the residents of the Hantsport Fire District, approved and shared in accordance with the terms of this Agreement.

l. "Net Shareable Operating Expenditures" means those expenditures associated with providing fire and emergency services to the residents of the Hantsport Fire District remaining after the contributions of others such as but not limited to the Glooscap First Nation have been deducted, provided that such net costs are approved by the Parties hereto being paid from the operating account and shared in accordance with the terms of this Agreement. Approval shall not be unreasonably withheld.

TERM

2. The term of this Agreement is ten (10) years, beginning on April 1, 2018 and ending March 31, 2028. It shall renew automatically for additional ten (10) year terms unless terminated under Section 30 below.

OBLIGATIONS OF WEST HANTS

3. West Hants shall, through the Hantsport Fire Department, within the Fire District:

- a. Provide and maintain Fire and Emergency Services without interruption;
- b. In the event of fire or emergencies occurring, suppress the same and generally provide protection for the lives and properties of residents;
- c. Conduct and sponsor research into the cause of fires and methods of preventing fire losses;
- d. Endeavor to educate and instruct the citizens in methods of fire prevention and fire suppression;
- e. Maintain premises for the purpose of providing fire suppression and related services, in the manner described herein;

4. In carrying out its objectives, the Hantsport Fire Department's first priority is to the Fire District. However, Kings and West Hants agree that equipment provided through this Agreement shall be available to the Hantsport Fire Department for purposes such as Mutual Aid Calls, Emergency Management Operations, (E.M.O.), and other emergencies;

5. The current Hantsport Fire District boundaries are depicted with Schedule A with said schedule forming part of this Agreement. Any change to the boundaries of the areas served by the Hantsport Fire Department shall require approval of both Kings and West Hants.

6. Subject to the Act and this Agreement, the day-to-day operation of the Hantsport Fire Department and the equipment shall be the responsibility of West Hants.

7. West Hants, on behalf of the Hantsport Fire Department shall:

- a. Register, and maintain registration, with both Kings and West Hants as a fire department, pursuant to Section 294 of the Act, and provide a list of

specific emergency services it will endeavor to provide within the Fire District;

b. Establish and maintain minimum standards of qualifications for any officer, Fire Chief, or Deputy Fire Chief. The minimum standard shall be the "*Nova Scotia Fire Service Officer Qualifications*" as prepared and approved by the Fire Services Association of Nova Scotia; and

c. Review and amend, as required to make consistent with this agreement, the Hantsport Fire Department's by-laws and regulations.

8. West Hants shall advise Kings at least one week in advance of the time and place of all public meetings of the Hantsport Fire Department, and a representative from Kings shall have the right to attend such meetings and be heard.

9. Within 60 days after its fiscal year end, West Hants shall provide Kings with a summary of its Fire and Emergency Services related activities.

10. West Hants will report to Kings on or before January 31 of each year, the number of calls during the year by municipal area, as reported by their service dispatch provider and adjusted by calls received internally.

11. The parties agree that West Hants, as the owner of the Capital Assets purchased in part by funds contributed by residents of Kings, reserves the right to relocate said assets, provided that, in the event of such relocation, West Hants agrees to locate a suitably related Capital Asset within the Fire Hall providing direct service to the Hantsport Fire District. Furthermore should the value of the replacement apparatus be less or more than the previous apparatus, the allocation of debt servicing between the Municipalities will be amended to reflect the change in value of the apparatus in use.

12. West Hants shall obtain and maintain "All Risks Property Insurance", against loss by fire or otherwise of the Fire Hall and Equipment and shall cause all parties to be named as "Loss Payee's." All proceeds of insurance related to the Fire Hall and Equipment shall be placed in the Capital Reserve Account.

13. West Hants shall maintain "General Liability Insurance" covering injury or damage to persons or property with a limit of not less than \$10,000,000. The policy shall be endorsed to include each party to the Agreement as an additional insured with respect to this Agreement. The policy shall further be endorsed to include cross liability, contractual liability, and personal injury.

14. At least 60 days prior to the commencement of each fiscal year of Kings and West Hants, West Hants shall prepare and submit to Kings a proposed Operating Budget for the upcoming fiscal year. The Operating Budget is subject to acceptance by resolution of the respective Municipal Councils.

15. At least 60 days prior to the commencement of each fiscal year of Kings and West Hants, West Hants shall prepare and submit to Kings, a Capital Budget and Five-Year Capital Plan for expenditures related to the subject matter of this agreement, and shall update annually. The Capital Budget and Five-Year Capital Plan is subject to acceptance by resolution of the respective Municipal Councils.

16. Unless otherwise approved by Kings, West Hants shall not spend monies on unbudgeted items related to the subject matter of this agreement and, in any event, shall not exceed \$10,000 more than either the Hantsport Fire Departments Operating or Capital Budgets without the approval of both Municipal Councils.

17. West Hants shall give Kings sixty (60) days' notice of its intention to dispose of any equipment having an original cost of more than \$25,000, purchased pursuant to this Agreement, and shall not dispose of such Equipment without having received approval from Kings Administration which shall not be unreasonably refused. If no West Hants station requires the equipment, Kings will receive first right of refusal to purchase said equipment. The net proceeds of the Kings percentage of capital contribution received shall be transferred to the Capital Reserve Account.

18. West Hants will maintain a separate cost centre, and will be able to provide records and accounts related to the assets, liabilities, income,

expenses, capital and operating reserves associated with the provision of Fire and Emergency Services to the Hantsport Fire District.

19. All books, records, and accounts of West Hants shall be audited annually by a registered municipal auditor, and a copy of the audited financial statements shall be part of a submission provided to Kings upon completion of the audit. The submission shall further include separate unaudited Statements of Operations and Statements of Financial Position for Capital, Operating and Reserve accounts and funds associated with the provision of Fire and Emergency Services to the Hantsport Fire District.

COST SHARING

20. The Net Shareable Operating Expenses approved by West Hants and Kings shall be allocated between West Hants and Kings on a rolling average of the percentage of the number of calls in the previous calendar year within the Fire District from Kings and West Hants locations.

a. In the 2018/19 fiscal year, the average will be calculated based on the percentage of the number of calls in both the 2016 and the 2017 calendar years.

b. In the 2019/20 fiscal year and all subsequent years, the average will be calculated based on the percentage of the number of calls in the three preceding calendar years.

21. West Hants will invoice Kings semi-annually for their proportion of the Net Shareable Operating Expenses. The second semi-annual billing in any following fiscal year will be increased or decreased to reflect actual after-audit expenditures from the previous fiscal year.

22. Net Shareable Operating Expenses shall include:

a. All contributions or other revenues received in connection with the Hantsport Fire District, excluding Kings, West Hants, and others including but not limited to the Glooscap First Nations contributions.

b. All the costs associated with the operation and maintenance of the Fire

Hall and the Equipment, as approved by the Parties within their Annual Operating Budgets.

- c. Liability insurance covering the Hantsport Firefighters, in performance of their duties in performing fire and emergency services, including Workers Compensation Insurance;
- d. Liability and property insurance, arising out of operation of the Equipment by the Hantsport Firefighters and its individual members;
- e. Annual honoraria to the Fire Chief, Deputy Fire Chief, and the active Hantsport Firefighters, in accordance with West Hants' policy, and included in the annual budget. Honoraria for stand-by duty on weekends and holidays will also be included, if approved in the annual budget.

LEVY PROCESS FOR KINGS' FIRE AREA RATES

- 23. West Hants shall follow the Kings' Fire and Recreation Area Rates Policy each year with respect to the levy of fire area rates on Kings' residents within the Hantsport Fire District. Kings will provide the proceeds from the levy of these Area Rates to West Hants annually on or before October 31st.
- 24. West Hants and Kings shall jointly carryout the public canvass for Kings' Shareable Capital Expenditures.
- 25. West Hants shall give Kings sixty (60) days written notice of its intention to conduct a public canvass in the Fire District, for Kings' share of Shareable Capital Expenditures, and shall not conduct such canvass without having received the approval of Kings Administration, which approval will not be unreasonably withheld.
- 26. West Hants shall provide to Kings, a detailed list of items to be included in the Fire Area Rate application, before it goes to a public meeting
- 27. Kings shall provide West Hants a detailed list of any items to be included in the annual public canvass presentation.

KINGS' OBLIGATIONS

28. Kings shall consider and approve, with necessary amendments, in a timely manner, the annual Fire Operations and Maintenance Budget, and Capital Budget and Five-Year Capital Plan.

29. Kings will provide West Hants with a Guarantee Resolution for debt financing of capital asset purchases approved in the Capital Budget, in the same proportion as the cost sharing percentage in effect in the year the debt financing is obtained.

OTHER

30. In the event of a partial, or complete loss of the Fire Hall, or a loss of any Equipment, the proceeds of any insurance shall be used to repair or restore the loss to the Fire Hall or replace the Equipment or as otherwise agreed by the parties.

31. In the event of a conflict between this Agreement and the Act, the latter shall prevail.

32. Either party may withdraw from this Agreement effective the end of any given fiscal year, provided that written notice has been provided to the other parties no less than one year prior to the intended withdrawal date. Furthermore, should Kings or West Hants withdraw from the Agreement, the withdrawing Party remains responsible for its share of liabilities accumulated, including future interest and principal debt charges, less its share of any Capital or Operating Reserve balances contributed during the life of this Agreement, but prior to the withdrawal date. There shall be no further severance, penalty, or other costs levied by either party as a result of the withdrawal.

33. Any disputes between the parties concerning the interpretation or application of provisions of this Agreement shall be referred to Arbitration pursuant to the provisions of the *Arbitration Act* of the Province of Nova Scotia.

INDEMNIFICATION

34. West Hants, and the Hantsport Fire Department Members shall not be liable for:

a. Any injury to Kings, or to any officers, employees, agents, residents, occupants or visitor of Kings, or for any damage to or loss of property of Kings, or of any officers, employees, agents, residents, occupants or visitors of Kings, caused by or in any way related to the performance of this Agreement outside of the Kings' border

35. Kings or West Hants as the case may be, shall save harmless and fully indemnify Hantsport Fire Department officers, employees and agents from and against all claims, liabilities and demands arising directly or indirectly from such injury, damage or loss as referred to in section 30 and such indemnification shall survive the termination of this Agreement.

36. Sections 34 and 35 do not apply if the injury, damage or loss was caused by the omission or wrongful or negligent act of an officer or employee of the Hantsport Fire Department while acting within the scope of his or her duties or employment.

37. Kings shall not be liable for any injury, damage or loss sustained by personnel, apparatus or equipment of West Hants caused by or in any way related to the performance of this Agreement.

38. Section 37 does not apply if the injury, damage or loss, was caused by the omission or wrongful or negligent act of an officer or employee of Kings while acting within the scope of their employment.

NOTICE

39. Any notice under this Agreement, unless otherwise provided, may be given if delivered or mailed, postage prepaid, or by facsimile transmission or electronic transmission to:

Chief Administrative Officer
Municipality of the County of Kings
87 Cornwallis Street
Kentville, NS
B4N 2E5

Chief Administrative Officer
Municipality of the District of West Hants
76 Morison Dr., P.O. Box 3000
Windsor, NS
B0N 2T0

SEVERABILITY

40. The parties covenant and agree that the invalidity or unenforceability of any provision of this Agreement will not affect the validity or enforceability of any other provision, and any invalid provision will be severable, or will be deemed to be severable.

WAIVER AND AMENDMENTS

41. No action by any party to this Agreement shall be construed as a waiver saving express written provision of such waiver, and this Agreement shall not be amended saving express written provision of such amendment by all parties hereto.

RELATIONSHIP OF PARTIES

42. The Participating Units intend that the parties hereto shall not be treated as partners or members of a joint venture for any purpose.

FURTHER ASSURANCES

43. The parties hereto agree to execute and deliver any further documents or assurances or to furnish any further information or perform any other act reasonably necessary to give full effect to the terms contained in the Agreement.

EFFECTIVE DATE

44. This Agreement is effective upon the date of execution of same by the parties hereto.

TIME

45. Time shall, in all respects be of the essence in the Agreement.

THIS AGREEMENT shall ensure to the benefit of and be binding upon the parties hereto, their heirs, executors, administrators, estates and assigns.

IN WITNESS WHEREOF the parties have executed this Agreement by their respective officials, duly authorized on that behalf, on the day and year first above written.

SIGNED SEALED AND
DELIVERED

IN THE PRESENCE OF

WITNESS

SIGNED SEALED AND
DELIVERED

IN THE PRESENCE OF

WITNESS

) MUNICIPALITY OF THE COUNTY OF
) KINGS
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) Peter Muttart, Mayor
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) _____
) Scott Conrod, Chief Administrative Officer

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) MUNICIPALITY OF THE COUNTY OF
) WEST HANTS
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) _____
) Abraham Zebian, Warden
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)
) _____
) Martin Laycock, Chief Administrative Officer

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