



RISK MANAGEMENT INFORMATION
MODEL FIRE CONTRACT BETWEEN CITY AND TOWN

Fire protection is the most commonly contracted for service between cities and towns. In most cases, these contracts have long and unique histories resulting in widely varying contract provisions. Many have long terms and are often renewed without giving much attention to their content beyond the provisions dealing with the cost of the service. The result can be contracts with outdated provisions that do not adequately protect the interests of either the city or town. In other cases, the parties are keenly aware of the contract provisions and disagree over its wording. To assist cities and towns in these types of situations, the Minnesota Association of Townships worked with the League of Minnesota Cities to develop this sample fire contract.

This sample has many goals: encouraging the use of written contracts; providing language that reflects current approaches to issues such as liability and indemnification; addressing issues that may have been overlooked in local contracts; offering language that attempts to protect the interests of both cities and towns; and ultimately providing a platform from which cities and towns can build their own contract to fit their particular circumstances and interests. Keep in mind this sample does not, and is not intended to, address all the unique circumstances that may exist in a particular situation.

Many of the recommendations contained in the “Guidelines for Minnesota Fire Protection Contracts” (rev. November 2001) written by the Fire/EMS/Safety Center were incorporated into this sample. However, the formula suggested in the document was simplified for this sample. For example, the sample uses the number of calls to a jurisdiction to reflect the level of department use instead of attempting to develop a method for determining the percentage of use of the fire department for each call as suggested in the Safety Center’s document. While some calls certainly involve more fire department resources than others, it was felt the level of use is balanced out over the three year average used in the formula. Not only is this approach simpler, it reduces the on-going administrative burdens on the fire department to track the more detailed information needed to determine the percentage of use per call.

Public officials with questions regarding this sample are encouraged to contact their respective organizations and, as always, have the contract reviewed by your local attorney before adopting it.

Chris Smith 02/08

This material is provided as general information and is not a substitute for legal advice.
Consult your attorney for advice concerning specific situations.

SAMPLE FIRE CONTRACT

This contract is made and entered into this _____ day of _____, 20____ (“Anniversary Date”) between the City of _____, _____ County, Minnesota, [address], a public corporation (“City”), and _____ Township, _____ County, Minnesota, [address], a public corporation (“Town”).

In consideration of the mutual promises and agreements hereinafter set forth the parties do hereby agree as follows:

1. **Fire Service.** Town agrees to purchase from City, and City agrees to provide Town, the following fire services:

(Check all those that apply)

- | | |
|--|---|
| <input type="checkbox"/> Structural Firefighting | <input type="checkbox"/> Emergency Medical Services |
| <input type="checkbox"/> External Structural Firefighting | <input type="checkbox"/> Fire Scenes |
| <input type="checkbox"/> Interior Structural Firefighting | <input type="checkbox"/> Rescue Scenes |
| <input type="checkbox"/> Grass/Forest Firefighting | <input type="checkbox"/> General Medicals |
| <input type="checkbox"/> General Firefighting | Level of Emergency Medical Response |
| <input type="checkbox"/> Vehicles & Equipment | <input type="checkbox"/> First Responder |
| <input type="checkbox"/> Carbon Monoxide Calls | <input type="checkbox"/> Emergency Medical Technician |
| <input type="checkbox"/> Other Non-Structural Firefighting | <input type="checkbox"/> Paramedic |
| <input type="checkbox"/> Rescue | <input type="checkbox"/> Fire Code Enforcement |
| <input type="checkbox"/> Vehicle & Equipment Extrication | <input type="checkbox"/> Hazardous Materials Response |
| <input type="checkbox"/> General Search & Rescue | Level of Hazardous Materials Response |
| <input type="checkbox"/> Confined Space Rescue | <input type="checkbox"/> First Responder, Awareness |
| <input type="checkbox"/> High Level Rescue | <input type="checkbox"/> First Responder, Operations |
| <input type="checkbox"/> Water Rescue | <input type="checkbox"/> HAZMAT Technician |
| <input type="checkbox"/> Diving/Recovery | <input type="checkbox"/> HAZMAT Specialist |
| | <input type="checkbox"/> Disaster Response |
| | <input type="checkbox"/> _____ |

The services indicated above are further explained, or limited, as follows:

- a. **Allocation of Resources.** The parties understand the fire department officer in charge of the particular scene shall exercise judgment to determine, in consideration of all the established policies, guidelines, procedures, and practices, how best to allocate the available resources of the fire department under the circumstances of a given situation. Failure to provide fire services because of poor weather conditions or other conditions beyond the control of City shall not be deemed a breach of this contract.
- b. **No Guarantee.** The parties understand and agree City will endeavor to provide the services indicated above to the best of its ability given the circumstances, but City makes no guarantees that the services it actually provides in a given situation will meet any particular criteria or standard.
2. **Payment.** Town agrees to pay City annually during the term of this contract the Payment Amount determined annually according to the following formula:

The following percentages relate specifically to Town in relation to the entire territory to which City provides fire services as the primary service provider (e.g., the entire City, Town’s Service Territory,

and all or any portions of other cities, towns, or unorganized territories included in the City's primary service area).

Number of fire service calls to Town
averaged over last three years: _____%

Market value of all taxable
and non-taxable structures: _____%

Population: _____%

Total: _____% ÷ 3 = _____% of Town Cost Allocation

Total Fire Department Annual Operational Budget
for the upcoming year: \$ _____

\$ _____ x _____% = \$ _____
Operational Budget Town Cost Allocation Payment Amount

For the purposes of this formula, population shall be determined by the most current state demographer's estimate available at the time the Payment Amount is determined.

City shall provide Town a written claim for the Payment Amount by the following date, or for each partial payment of the Payment Amount according to the following schedule:

- a. **Annual Meeting of Parties.** Town and City shall hold at least one joint meeting annually during term of this contract at least 60 days before its anniversary date to calculate the Payment Amount for the upcoming year, discuss Town's satisfaction with the service provided during the year, and to discuss such other issues as either party deems relevant to this contract. The meeting shall be held separately from any regular Town or City meeting and shall be attended by at least a quorum of each party's governing body.
3. **Emergency Service Charge.** Town, in its sole discretion, may exercise its authority to impose and collect an emergency service charge on those receiving emergency services, including fire services, within Town. City shall have no right to, or interest in, any service fees collected by Town. If Town imposes an emergency service charge it shall provide City a list of the specific types of information it determines it needs collected in order to successfully impose and collect the charge. City shall make a good faith effort to collect the requested information for each service call to the Service Territory and promptly provide Town with the information it collected.
4. **Service Territory.** City shall provide fire services as indicated in this contract to the area in Town described below and/or as indicated on a map which is attached hereto and made part of this contract. The identified area shall constitute the Town's Service Territory for the purposes of this contract.
[Describe the Service Territory or attach map outlining the Service Territory]
5. **Term.** This contract shall commence on the effective date indicated above and shall expire ____ years from that date unless terminated earlier as provided herein.
6. **Ownership.** City owns the buildings and equipment associated with the Fire Department and the amounts paid by Town do not give rise to any ownership interest in, or responsibility toward, those items unless a specific ownership interest is indicated below: *[describe if Town currently has any interest in the buildings or equipment or will acquire some interest during the term of the contract]*

7. **City's Responsibilities.** In addition to any other obligations described herein, City shall:
 - a. Authorize and direct the City fire department to provide the fire services described herein to Town's Service Territory;
 - b. Develop a detailed annual operational budget for the fire department for each year during the term of this contract by the Anniversary Date and present it to Town along with sufficient information to explain the items included in the budget figures;
 - c. Upon Town's request, provide Town access to financial and cost data related to the fire department for five years prior to the current service year;
 - d. Disclose to Town any proposed action City or the fire department intends to take that can reasonably be expected to effect the Insurance Services Office Fire Protection Grade in the Service Territory or City's ability to provide the fire services indicated above; and
 - e. Promptly disclose to Town any information City can reasonably anticipate will directly affect its ability to perform its obligations under this contract.

8. **Town's Responsibilities.** In addition to any other obligations described herein, Town shall:
 - a. Promptly pay City the Payment Amount as indicated above for the year of service, or a prorated share of the Payment Amount for the length of service actually provided if the contract is terminated early;
 - b. Present a budget and levy proposal to the town electors at each annual town meeting during the term of this contract seeking authority to levy funds as needed to pay the "Payment Amount"; and
 - c. Promptly disclose to City any information Town can reasonably anticipate will directly affect its ability to perform its obligations under this contract.

It is understood and agreed Town shall have no responsibility whatsoever toward the fighters or other emergency personnel including any employment related issues such as training, supervision, performance reviews, discipline, compensation, benefits, insurance coverages, compliance with any employment related federal, state, and local laws and rules such as OSHA, ERISA, RLSA, FMLA, or any other employment related issues. It is further agreed Town has no responsibility, beyond paying the agreed upon Payment Amount, for acquiring, operating, maintaining, housing, or replacing equipment as needed to provide the fire services described herein.

9. **Insurance Requirements.** City shall maintain general liability insurance for its services and shall include Town as an additional insured for the term of this contract and any extensions thereof. City shall also maintain inland marine, automobile, and property insurance coverages. City shall provide Town proof of such insurance coverages and the additional insured endorsement naming the Town annually by the anniversary date of this contract.

10. **Indemnification.** City agrees to defend and indemnify Town against any claims brought or actions filed against Town or any officer, employee, or volunteer of Town for injury to, death of, or damage to the property of any third person or persons, arising from City's performance under this contract for services. Under no circumstances, however, shall City be required to pay on behalf of itself and Town, any amounts in excess of the limits on liability established in Minnesota Statutes Chapter 466 applicable to any one party. The limits of liability for Town and City may not be added together to determine the maximum amount of liability for City. The intent of this subdivision is to impose on City a limited duty to defend and indemnify Town for claims arising out of the performance of this contract subject to the limits of liability under Minnesota Statutes Chapter 466. The purpose of creating this duty to defend and indemnify is to simplify the defense of claims by eliminating conflicts between the parties and to permit liability claims against both parties from a single occurrence to be defended by a single attorney.

11. **No Waiver.** Nothing herein shall be construed to waive or limit any immunity from, or limitation on, liability available to either party, whether set forth in Minnesota Statutes Chapter 466 or otherwise.
12. **Modification.** This writing contains the entire agreement between the parties and no alterations, variations, modifications, or waivers of the provisions of this agreement are valid unless reduced to writing, signed by both City and Town, and attached hereto.
13. **Subcontracting & Assignment.** City shall not subcontract or assign any portion of this contract to another without prior written permission from Town. Services provided to Town pursuant to a mutual aid agreement City has, or may enter into, with another entity does not constitute a subcontract or assignment requiring prior approval of Town so long as City remains primarily responsible for providing fire services to Town's Service Territory.
14. **Termination.** This contract may be terminated at anytime during its term by mutual agreement of the parties. Either party may terminate this agreement by personally serving a 120 day written notice of termination on the other party. This agreement shall terminate 120 days from the date of personal service of the written termination notice unless the party serving the notice withdraws the notice in writing before it is effective. If Town fails to pay for the service according to the schedule established herein, City may terminate this agreement 60 days from the date of personal service of written termination notice. Notice to City shall be served on the City administrator, or City clerk if there is no City administrator, and notice to Town shall be served on the Town clerk.
15. **Service Contract.** This is a service contract. The parties do not intend to undertake or create, and nothing herein shall be construed as creating, a joint powers agreement, joint venture, or joint enterprise between the parties.
16. **Minnesota Law Governs.** This contract shall be governed by and construed in accordance with the internal laws of the State of Minnesota. All proceedings related to this contract shall be venued in the State of Minnesota.
17. **Severability.** The provisions of this contract shall be deemed severable. If any part of this contract is rendered void, invalid, or otherwise unenforceable, such rendering shall not affect the validity and enforceability of the remainder of this contract.

IN WITNESS WHEREOF, the parties have executed this contract effective on the date indicated above.

<p>City</p> <p>_____ City</p> <p>By its Mayor:</p> <p>_____</p> <p>Signature</p> <p>_____</p> <p>Print Name</p> <p>_____</p> <p>Date</p> <p>_____</p>	<p>Town</p> <p>_____ Township</p> <p>By its Chairperson:</p> <p>_____</p> <p>Signature</p> <p>_____</p> <p>Print Name</p> <p>_____</p> <p>Date</p> <p>_____</p>
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Clerk

Clerk