

TOWN OF ITUNA

BYLAW NO. 6 - 99

A BYLAW TO PROVIDE FOR ENTERING INTO AN AGREEMENT
WITH THE VILLAGE OF KELLIHER FOR THE PURPOSE OF
PROVIDING FIRE FIGHTING SERVICE TO THE VILLAGE OF KELLIHER

THE COUNCIL of the TOWN OF ITUNA in the Province of Saskatchewan,
enacts as follows:

1. The Town of Ituna is hereby authorized to enter into an agreement, attached hereto and forming part of this bylaw, and identified as Exhibit A with the following:

Village of Kelliher,
P. O. Box 190,
Kelliher, Saskatchewan.
SOA 1V0

for the purposes stated within the agreement.

2. The Mayor and Town Administrator of the Town of Ituna are hereby authorized to sign and execute the attached agreement identified as Exhibit A.
3. This agreement shall be in effect upon execution.

Mayor



SEAL

Administrator



EXHIBIT "A"

THIS AGREEMENT MADE THIS 24th DAY OF August
A.D., 1999

BETWEEN:

Town of Ituna
a municipal corporation in
the Province of Saskatchewan
(herein after referred to as "the Town")

OF THE FIRST PART

-and-

Village of Kelliher
a municipal corporation
in the Province of Saskatchewan
(herein after referred to as "the Village")

OF THE SECOND PART

WHEREAS:

- A. The Town and the Village exist in close proximity; and
- B. The Town and the Village operate fire departments and supply certain fire suppression, rescue and/or dangerous goods services to their respective populations;
- C. The Parties mutually acknowledge that each may not in all cases be able to respond with sufficient resources to calls for Fire Services from within their jurisdictions, and the Councils of the Town and the Village deem it expedient and in the public's best interest to agree between them that the Parties may provide aid, each to the other, in such circumstances; and
- D. The Parties are empowered pursuant to Sec. 136 of The Urban Municipalities Act, 1984 to enter into agreements with other municipalities for the furnishing of fire-fighting services and fire-fighting equipment beyond their boundaries, on any terms that may be agreed upon; and
- E. The Parties wish to agree herein to terms upon which fire-fighting services and equipment may be provided;

NOW THEREFORE THIS AGREEMENT WITNESSES:

SECTION 1: DEFINITIONS

1.1 The following words and phrases shall have the meanings ascribed to them in this,

Section 1, for the purpose of this agreement;

Assisting Party	means the Party requested to provide Fire Services hereunder by the Party primarily responsible for the provision of Fire Services within the boundaries of a municipality, whether or not the assistance is actually extended.
Per Incident Charge(s)	means those charges for the provision of Fire Services set forth in Section hereto, which charges may be adopted and which may be amended from time to time by bylaw of the Council of each Party.
Fire Services	means fire-fighting, rescue, and/or dangerous goods assistance and other mishaps which may occur in any municipality from time to time.
Fire Services Agreement	means an agreement between either Party hereto and another municipality by which certain fire-fighting and other services are provided to that municipality, but excludes mutual aid agreements between municipalities.
Fire Chief	for the purposes of Section 6 and 7 of this agreement, means the Chief of the Assisting Party or the Requesting Party, as the case may be, and includes other personnel as are authorized by their department policy to request or extend aid under this agreement.
Incident Command Procedures	means those procedures for the establishment and transferring of command over fire-fighting and related services at the scene of an emergency response as described in Section 4 of this agreement.
Requesting Party	means the Party which has the primary obligation to respond to fire alarms and other emergencies within a municipal territorial jurisdiction and which requests assistance from the other Party pursuant to this agreement.

SECTION 2: TERM OF AGREEMENT

- 2.1 This agreement shall be of force and effect from the effective date, and shall continue in effect until terminated by either Party in accordance with the provisions of Section 13.
- 2.2 The effective date shall be the date upon which the last Party executes this agreement, following ratification hereof by bylaw of the Councils of the Town and Village

SECTION 3: FIRE SERVICE MUTUAL AID

- 3.1 As and from the effective date, each Party hereto may request Fire Services from the

other Party and such Fire Services, if given, shall be requested and extended in accordance with and subject to the terms and conditions set forth in this agreement.

3.2 Fire Services may be requested either where the Requesting Party is unable to respond to a call within its jurisdiction or it is unable to respond with sufficient manpower or equipment, in the opinion of the Requesting Party, and further to the above, Fire Services may be extended without request if the Party that holds primary responsibility for the jurisdiction in which an emergency is taking place is unable to be contacted.

3.3 Where the Requesting Party is privy to a Fire Services Agreement, the geographic area covered in the Fire Services Agreement shall, for the purposes hereof, be deemed to be within the jurisdiction of the Requesting Party, without inquiry by the Assisting Party. In such cases the Requesting Party shall be principally liable for the payment of service charges of the Assisting Party whether or not the municipality receiving aid under the Fire Services Agreement disputes such charges.

SECTION 4: JURISDICTION AND COMMAND

4.1 Where the Requesting Party has been unable to respond to a call for Fire Services, and the aid of the Assisting Party is requested, the Assisting Party shall have command of the response and shall provide Fire Services in accordance with all applicable policies, operating procedures, directives, manuals, and/or practices of the Assisting Party.

4.2 Where the Requesting Party requests assistance but has responded or intends to respond to the call, the first Party on the scene shall establish a command, and shall retain jurisdiction and command over Fire Services unless command is formally turned over to the other Party in accordance with the appropriate Incident Command Procedures.

SECTION 5: EFFECT OF COMMAND

5.1 The Party which establishes or assumes command may direct the other Party in accordance with the policies, procedures, practices, and methodologies adopted or followed by the commanding Party.

5.2 The Party subject to the commands of the other shall respond to such command whether or not such commands are in accordance with the policies, procedures, practices, and methodologies adopted or followed by the subordinate Party.

5.3 Nothing set forth in subsections 5.1 or 5.2 above shall require the subordinate Party to act or suffer or permit any action which may be contrary to law or which places the personnel or equipment of that Party unduly at risk.

SECTION 6: ASSISTANCE DISCRETIONARY

6.1 The Parties acknowledge that each has a primary obligation to provide Fire Services within the boundaries of its own municipality and/or Fire Protection District, and that the provision of aid to the Requesting Party may not be advisable, on a call by call

basis, having regard to such factors as the state of available resources, the nature of the incident giving rise to the request for aid, the travelling distance involved, and the existence or apprehension of emergencies or potential emergencies within the Assisting Party's municipality. Accordingly, the Fire Chief of a Party that receives a request to assist another Party shall have the sole and unfettered discretion to decline to authorize Fire Services to the Requesting Party and may exercise such discretion without stating reasons. Further, the Assisting Party may divert personnel and equipment to another scene notwithstanding a response in aid of the Requesting Party or may withdraw from a scene, whether or not the Assisting Party is in command thereof, if in the sole discretion of the Fire Chief of the Assisting Party another alarm, emergency, or location should be afforded a higher priority, and may exercise such discretion without stating reasons.

- 6.2 Notwithstanding anything to the contrary in this agreement, the Assisting Party shall under no circumstances be liable for any damages or injury for failing to respond to any call or for delay in responding to any call or as a result of the failure of the equipment to attend to the incident scene.

SECTION 7: PROCEDURES FOR REQUESTS

- 7.1 The Fire Chief of the Requesting Party shall have and is hereby granted full and sufficient authority to request Fire Services from the Assisting Party.
- 7.2 The Fire Chief of the Assisting Party shall have and is hereby granted full and sufficient authority to provide or, in his discretion, to decline to provide Fire Services to the Requesting Party.
- 7.3 The Fire Chief of the Assisting Party is further authorized to dispatch such personnel and equipment as can be allocated, in his judgement, for the response, and may do so without verifying the bona fides of the call or the alarm giving rise to the request. The Parties agree to co-operate in establishing protocols for confirming the identity of the caller on behalf of the Requesting Party so as to preclude so far as possible requests for assistance being made under false pretences.

SECTION 8: PER INCIDENT CHARGE

- 8.1 The Assisting Party may charge a fee of \$500.00 per call-out plus \$75 per thereafter while truck is on site plus \$15 per man per hour plus mileage for men taking their own vehicle at .26¢ per km. and in addition the cost of materials used (i.e. fire-fighting foam) to assist in offsetting the cost of provision of service.
- 8.2 It is acknowledged that Per Incident Charges are reviewable from time to time by the respective Councils of the Town and the Village. Fees may be amended, by bylaw, on or before April 1st, for the ensuing year, for so long as this Agreement remains in force. Per Incident Charges so approved shall be annexed to this agreement in place of the fees set forth in Section 8.1.
- 8.3 Following the provision of Fire Services, the Assisting Party shall prepare and deliver to the Requesting Party an itemized invoice for payment, in accordance with rates set forth in Section 8.1, and the Per Incident Charge shall constitute a debt of the Requesting Party. The Requesting Party shall remit payment of the amount so billed within 30 days of the receipt of the invoice. Failing payment as required, the Requesting Party shall pay interest on the debt or such portion thereof as remains

unpaid, at the prime rate of interest of the Bank of Canada plus two (2%) per cent, such interest to be calculated from the date payment is overdue to the date of payment in full.

SECTION 9: EMERGENCY MEASURES

9.1 The Parties acknowledge that each has an emergency measures plan in effect in accordance with the Saskatchewan Urban Municipalities Act. The provisions of this agreement are not in lieu of plans made in respect of emergency measures nor does this agreement derogate from the duty of the Parties hereto to follow protocols and lawfully report to authorities and agencies in the case of discharges of pollutants, spills or discharges of hazardous materials, hazardous waste, disaster in the transportation of dangerous goods, and incidents of the like.

SECTION 10: INSURANCE

- 10.1 Each Party hereto shall obtain and keep in force all-risk property insurance covering, on an appraised cost basis, vehicles and equipment which may be employed in the provision of assistance under this agreement.
- 10.2 Each Party hereto shall obtain and keep in force Comprehensive General Liability Insurance covering the operations of its fire department, including unlicensed vehicles, in an amount not less than \$2,000,000.00 per occurrence.

SECTION 11: Mutual Releases

- 11.1 Each Party agrees to remise and release the other party in respect of damage to or loss of property and in respect of personal injury (including death) occurring in the course of requesting or providing assistance under this agreement, and each expressly waives any right cause of action in respect of such loss or injury as against the other Party, howsoever arising.

SECTION 12: INDEMNIFICATION

- 12.1 The Parties expressly covenant and agree that the Requesting Party shall, in respect of third party claims of any nature arising from the provision of Fire Services by the Assisting Party under this agreement, indemnify and hold harmless and keep indemnified and held harmless the Assisting Party from and against all losses, claims, costs, expenses, demands, actions and causes of action (hereinafter in this Article 12 called "costs") asserted by the third parties, save and except and this covenant of indemnity expressly excludes, such costs or portions of costs as are attributed to the negligence or breach of covenant herein committed by the Assisting Party, its officers, employees, and/or volunteers. Notwithstanding and termination of this agreement in accordance with Article 13, the covenant of indemnity shall apply to such costs as arise in consequence of the provision of Fire service by the Assisting Party during the currency of the Agreement.

SECTION 13: TERMINATION

- 13.1 Either Party hereto may terminate this agreement upon thirty (30) days written notice to such effect delivered to the other Party.

SECTION 14: GENERAL AND MISCELLANEOUS

- 14.1 The captions, section numbers, article numbers, and Table of Contents (if any) appearing in this Agreement are inserted as a matter of convenience only and in no way limit, define, construe, or describe the scope or intent of such clauses or articles and such captions, section numbers, article numbers, and Table of Contents shall not in any way other than for reference purposes affect the interpretation or construction of this Agreement.
- 14.2 This Agreement shall be governed by and construed in accordance with the laws of the Province of Saskatchewan.
- 14.3 Subject to provisions hereof for the revision of fees, this Agreement may not be modified or amended except by an instrument in writing signed by both Parties hereto or by their successors or assigns.
- 14.4 The words "the Town " and "the Village" shall mean respectively "the Town , its successors and/or assigns" and "the Village , its successors and/or permitted assigns".
- 14.5 If for any reason any term, covenant, or condition of this Agreement, or the application thereof to any person or any circumstance, is to extent held or rendered unenforceable or illegal then such term, covenant or condition:
- (a) is and is deemed to be independent of the remainder of the Agreement and to be severable and divisible there from and its unenforceability or illegality does not affect, impair, or invalidate the remainder if the Agreement or any part thereof; and
 - (b) continues to be applicable to and enforceable to the fullest extent permitted by law against any person and circumstance other than those to whom it has been held or rendered unenforceable or illegal.
- Neither party is obliged to enforce any term, covenant or condition in this Agreement against any person, if, or to the extent by doing so, such Party is caused to be in breach of any laws, regulations, or enactments from time to time in force.
- 14.6 No waiver shall be inferred or implied by any forbearance by a party hereto or anything done or omitted to be done by a Party with respect to a default, breach or nonobservance except only an express waiver in writing and then only to the extent expressly stipulated and necessary to give effect to such express waiver.
- 14.7 Notwithstanding anything to the contrary contained in this Agreement, if either the Town or the Village is bona fide, delayed or hindered in or prevented from performance of any term, covenant, or act required in this Agreement by reason of strikes, lockouts, labor trouble, inability to procure materials, government intervention, or other casualty or contingency beyond the reasonable control of the party who is by reason thereof delayed in the performance of such Party's covenants and obligations under this Agreement in circumstances where it is not within reasonable control of such party to avoid delay, excluding solvency, lack of funds or other financial cause of delay (hereby known as "Unavoidable delay"), such performances shall be excused for the period of the delay and the period within which performance is to be effect shall be extended by the period of such delay.

14.8 Any notice or demand required or permitted to be given to either party hereto pursuant to this Agreement (excluding requests for assistance contemplated in Section 3) shall be in writing and may be delivered to the Party in person (or agent) or by sending it by prepaid registered mail, addressed:

In the case of the Town

To: Town of Ituna
Office of the Town Clerk (Administrator)
Box 580
ITUNA, SK.
SOA 1NO

In case of the Village

To: Village of Kelliher
Office of the Village Clerk (Administrator)
Box 190
Kelliher, SK
SOA 1VO

or to such alternate address as either party may be notice from time to time advise, and if mailed as aforesaid shall be deemed to be given three (3) days following the date of such mailing.

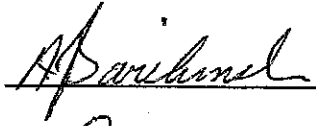
Any such notice, demand, request, or consent is conclusively deemed to have been given or made on the day upon which it is delivered, or, if mailed and postal service is interrupted or substantially delayed, any notice, demand, request, or other instrument shall be delivered only in person to the same Town or Village at the above address.

14.9 Time is of the essence of this Agreement and of every part thereof.

14.10 This Agreement shall be binding upon and ensure to the benefit of the Parties, their respective successors and representatives.

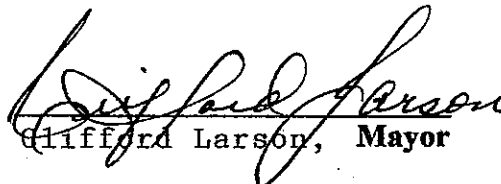
THIS AGREEMENT executed the day and date first written above by affixing of the appropriate signatures of both Parties.

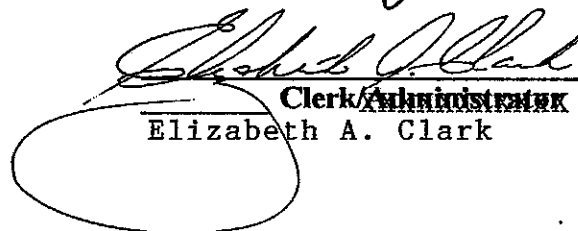
Town of Ituna


Mayor


Clerk/Administrator

Village of Kelliher


Clifford Larson, Mayor


Clerk/Administrator
Elizabeth A. Clark