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First Nations— Municipal Community Infrastructure Partnership Program

Service Agreement Toolkit

2ND EDITION

The First Nations–Municipal Community Infrastructure Partnership Program (CIPP) Service Agreement Toolkit

The Federation of Canadian Municipalities
National Programs
24 Clarence Street
Ottawa, ON K1N 5P3
Telephone: 613-241-5221
Fax: 613-241-7440
Website: www.fcm.ca

Editor: Moira White, Ubiquitext

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We encourage you to reproduce this toolkit and credit the Federation of Canadian Municipalities.

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The Federation of Canadian Municipalities (FCM)

Since 1901, municipal governments have maintained a strong advocacy role in lobbying the federal government to include municipal concerns in policy development and national decision making through the Federation of Canadian Municipalities (FCM). With almost 2,000 members, FCM represents the interests of municipalities on policy and program matters that concern not only Canada's largest cities but also small urban and rural communities and 21 provincial and territorial municipal associations.

Through organizing municipal concerns at a national level, the FCM ensures the federal government understands the full impact of its decisions on municipal governments and taxpayers.

Some key concerns of the FCM include infrastructure; affordable housing; rural, remote and northern communities; public transit; environment and sustainable development; and the role of women in local government.

For more information please visit the FCM website at www.fcm.ca

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List of acronyms

AANDC	Aboriginal Affairs and Northern Development (AANDC), formerly Indian and Northern Affairs Canada (INAC)
ADR	Alternative/Appropriate Dispute Resolution
AFN	Assembly of First Nations
CCP	Comprehensive Community Planning
CIPP	Community Infrastructure Partnership Program
FCM	Federation of Canadian Municipalities
INAC	Indian and Northern Affairs Canada (INAC is also commonly referred to in legal documents as the Department of Indian Affairs and Northern Development [DIAND]). The Department's name was changed in May 2011 to the Department of Aboriginal Affairs and Northern Development (AANDC).
MTA	Municipal-type agreement
MTSA	Municipal-type service agreement

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Unit 1

Introduction to CIPP and Service Agreements

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1. Introduction

This CIPP toolkit is the result of year-long research conducted by the Federation of Canadian Municipalities with funding from Aboriginal Affairs and Northern Development (AANDC). Its intended audience is elected officials and staff from both First Nations and municipalities who have found themselves asking the following questions:

- What are the benefits of working with my neighbouring community/government on local services and infrastructure?
- How can I begin to work with my neighbour despite past conflict and prejudices?
- What are the key components of a robust service agreement?
- How can I negotiate an agreement without compromising the current government-to-government relationship?
- How can I work with my neighbour to promote regional sustainability?

The toolkit is based on qualitative and quantitative research developed in concert with both First Nations and municipalities. Engagement included focus groups, expert interviews, online surveys and collaboration with knowledgeable organizations (see Acknowledgements) on the needs and concerns about municipal–First Nations collaboration on services and related issues.

With its information, templates, and checklists, the CIPP Toolkit provides First Nations and municipalities with a valuable resource on service agreements, intergovernmental cooperation and the value of understanding neighbouring communities. Through continued efforts to work more effectively with other communities and governments, it will sustain the needed momentum to continue

to improvement the health, quality of life, and sustainability in municipalities and First Nations across Canada.

1.1 Toolkit highlights

Cross-cultural workshop planning guide
Unit 2, Chapter 1.5

Communication protocol template
Unit 2, Chapter 1.7

Municipal and First Nations governance structures
Unit 2, Chapter 2

Breakdown of legal terms and definitions in service agreements
Unit 3, Chapter 2.2

Renegotiation tips and tools
Unit 3, Chapter 3

Service agreement templates on water, wastewater, fire protection, solid waste, transit, animal control, recreation, and comprehensive servicing
Unit 3, Chapter 5

Source water protection and joint sustainability planning best practices
Unit 4, Chapters 1 and 2

2. Program overview

Municipal governments and First Nations across Canada are working together to provide improved and cost-effective services to their residents while strengthening ties between the Aboriginal and non-Aboriginal populations in Canada. Although there are many successful service agreements, many communities have yet to meet and understand their neighbours and work collaboratively.

Many First Nations governments are striving to meet their community's needs for infrastructure services. As a result, they are challenged by the costs associated with such large capital projects and the operation and maintenance of these services (e.g., water and wastewater treatment). In many cases municipal governments are also having to deal with aging infrastructure and rising repair costs, without the resources to complete major system upgrades.

Through improved communication and relationship building, First Nations and municipalities can create partnerships based on respect and a sense of community to meet their mutual service and infrastructure needs.

2.1 Community Infrastructure Partnership Program overview

The Community Infrastructure Partnership Program (CIPP) is a joint program between the Federation of Canadian Municipalities (FCM) and Aboriginal Affairs and Northern Development Canada (AANDC), formerly Indian and Northern Affairs Canada (INAC). This joint program is guided by a steering committee comprising representatives from FCM, AANDC and the Assembly of First Nations (AFN). The

program aims to foster **relationships** between First Nations and adjacent municipalities across Canada, encouraging **mutually beneficial community infrastructure service agreements** — particularly those pertaining to water and wastewater infrastructure.

Partnerships are key as they can help to **reduce costs** associated with service provision, **enhance social and economic development**, and **build capacity** within First Nations and municipal governments.

2.2 What is a service agreement?

For this toolkit, a service agreement is an agreement (either formal or informal) between a First Nation and a municipality for one party to purchase specified local services from the other. This definition of a service agreement differs from one that allows each party to provide local services separately to their respective communities. Such agreements are based on cost comparisons and feasibility studies under the following circumstances:

- It appears there is a capacity for the services to be provided.
- Service provision is physically feasible.
- There is a cost benefit to service partnering.

In cases where a service agreement appears to be desirable, that service agreement will prevent costly duplication of infrastructure or services while providing the service provider with income in the form of service fees. This can benefit First Nations and municipal communities alike.

AANDC refers to service agreements as municipal-type agreements (MTA) or municipal-type service agreements (MTSA). According to AANDC, MTAs can be agreements between two First Nations or between a First Nation and provincial government, municipal government, private contractor, Crown Corporation, individual or an organization that involves the provision of municipal services (water, wastewater, solid waste management, fire protection, etc.).

2.3 Service agreement toolkit

The CIPP has created a toolkit based on the principle that greater cooperation and collaboration at the community level will accomplish two goals:

- Provide greater solidarity on a variety of issues.
- Contribute to greater regional harmonization on issues not limited to service provision.

Municipal governments and First Nations can work together to improve quality of life and build capacity. When First Nations and municipalities work together they can reduce costs and promote economic and social development. This toolkit acts not only as a best practices guide, but also as a point of reference for First Nations and municipalities

that are working on developing service agreements or simply want to learn more about other service options. The toolkit is intended to be used by political representatives of both First Nations and municipalities, but will also be useful for administrative and technical staff that are negotiating the agreements and managing local services.

It should be recognized that this toolkit is optional and that it will not provide answers to all the questions and issues that may arise through the negotiation of a service agreement. It was produced to raise awareness of some of the issues that participants may encounter as they move forward. Issues in each individual case and circumstance will be unique and will evolve over time. These examples are intended to provide guidance on how various issues might be addressed, with some sections not necessarily being applicable to every agreement or situation.

This toolkit is designed to assist partners as they take part in CIPP's partnership training workshops. The workshops will address relationship building for long-term partnerships and capacity building to work toward mutually beneficial service agreements with parties who have identified a need and want to work together. This toolkit is divided into the following four units:

Unit 1: Introduction to CIPP and Service Agreements

This unit provides an overview of CIPP, service agreements and current trends in First Nations–municipal cooperation across Canada.



Unit 2: Guide to Relationship Building

Relationships are essential for effective service agreement negotiation, implementation and renegotiation. This unit addresses common myths, questions and concerns about First Nations–municipal relations. It provides a useful guide for understanding and addressing the misunderstandings and mistrust that have historically plagued First Nation–municipal relationships. Checklists and guides to dispute resolution and community engagement are provided as well as a communications protocol template. Two case studies highlight how communities have overcome relationship obstacles and cooperated to enhance local services and economic development.

Unit 3: Guide to Service Agreements

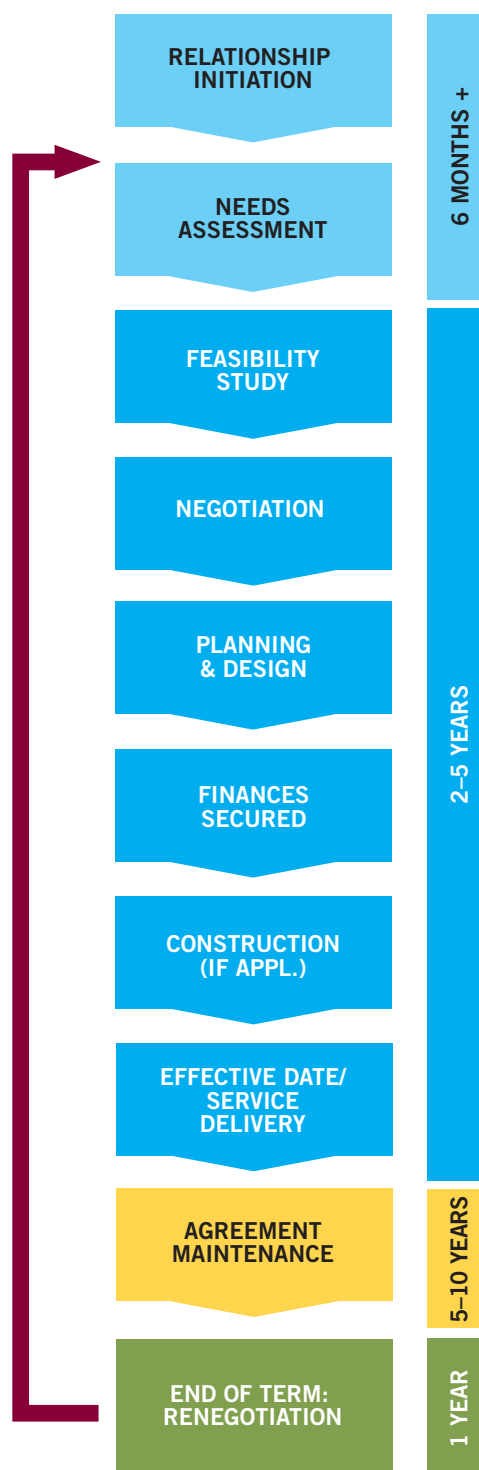
This unit provides a guide to the stages of service agreement development, from feasibility study to the development of appropriate legal agreements, maintenance and renegotiation of agreements. A guide through these processes concludes with two case studies. Seven service agreement templates are provided in an electronic appendix in the areas of water and wastewater, solid waste, fire protection, animal control, transit, recreation and comprehensive agreements.

Unit 4: Resources and Other Considerations

This unit contains First Nation–municipal source water protection and joint sustainability planning guides. It also serves as a reference guide for funding opportunities and additional resources.

The CIPP toolkit provides suggestions and guidance with each step of the service agreement process as shown in **Table 1**, including relationship building, models for dispute resolution systems, recommended service agreement provisions and a number of case studies that highlight this process.

Table 1: Roadmap to service agreements



Source: Community Infrastructure Partnership Program (CIPP), January 2011.

2.4 Trends in service agreements across Canada

It is important to note that service agreements are not the only type of partnership possible between First Nations communities and municipalities. Other types of agreements are more informational in nature or focus on formal consultation or political cooperation. However, due to the large scope of agreements, this toolkit focuses only on service agreements and does not include soft partnerships.

Many types of service agreements exist. The most common types are those for water, wastewater, fire protection and solid waste management. The locations and intensity of these agreements vary greatly across Canada.

British Columbia has the largest number of First Nations (198) in the country, which helps to explain why it has the highest number of service agreements and the most interest in establishing new agreements. CIPP's research shows there are more than 550 formal service agreements in the province and many more informal agreements, particularly in the Fraser Basin and on Vancouver Island. The majority of these agreements have been developed in the past decade and cover a variety of services including water, wastewater, street lights, fire protection, solid waste, animal control and recreation — with the most common being solid waste. In British Columbia, communities have continued to identify a need for more service agreements, particularly in water and wastewater provisions.

Despite the relatively small number of First Nations in Alberta (44), there are more than 100 formal service agreements in the province and proportionally a significant number of

water and wastewater agreements. There is also significant interest in further pursuing water agreements with neighbouring municipalities as well as increasing capacity and knowledge about the benefits that service agreements can foster for adjacent communities. Currently, Alberta has been focusing on the development of regional water systems and water boards, many of which include First Nations. For more information on regional water systems and new ways of co-managing regional services, please see **Unit 4, Chapter 1.1: Regional water commissions.**

Saskatchewan is home to 70 First Nations. Many service agreements in the province have resulted from settling Treaty Land Entitlement (TLE)¹ cases, in which First Nations communities have acquired lands inside a municipality based on the federal Additions to Reserves (ATR) policy.² This is particularly true in the urban areas of Saskatoon and Prince Albert. Service agreements were created as both an effective and practical means to provide services and a cost-recovery system for the municipality due to loss of taxable land. This toolkit contains a case study about TLE service agreements using the example of the City of Saskatoon and Muskeg Lake First Nation. Please see **Unit 3, Chapter 6.2** for more information. As well, a large number of service agreements exist between rural municipalities and First Nations with the most common agreements being for solid waste. Solid waste agreements are more common because distance between communities is less of a mitigating factor when considering service agreements related to regional landfills, as larger distances between communities can be overcome easily. Furthermore, there is a need to improve the mechanisms for solid

¹ Treaty Land Entitlement seeks to settle outstanding land debts owed to First Nations according to historic treaties. Usually, a First Nation is granted Crown land and/or is given a cash settlement, which is used to purchase land. The federal and provincial governments and First Nations are involved in the negotiations of these settlements.

² The federal government has the authority to set out lands for the purpose of expanding existing reserves or creating new reserves. The ATR policy stipulates the criteria that must be fulfilled and the issues that must be addressed to set apart lands for a reserve. Population growth and landless Aboriginal communities are two reasons additional reserve land may be required, for example.



waste management throughout the province. As a result, many communities have identified solid waste service agreements as a stepping stone to cooperation on more complex issues such as water and wastewater.

In Manitoba there are a total of 62 First Nations. Only a limited number of communities in the province have service agreements between First Nations and municipalities. The trend among those communities that do have service agreements is to have multiple shared services or comprehensive agreements. There has been minimal demand for more service agreements due to the limited capacity or operational feasibility in the rural and remote areas of the province. Opportunities exist in Manitoba for collaboration on solid waste, an issue that is more regional in nature.

Ontario has the second highest number of First Nations communities after British Columbia (126). Many First Nations and municipalities in Southern Ontario work together for the provision of services, particularly solid waste removal and fire protection. Across the province, there are few water and wastewater agreements. In Northern Ontario there is little demand for service agreements. Many communities are extremely remote (fly-in) and do not have neighbouring municipalities, with the exception of First Nations in the Thunder Bay area.

In Quebec, similar to Manitoba, few communities (approximately 25) have service agreements; however, these numbers are proportionally high as there are only 39 First Nations in Quebec. The communities that are cooperating tend to have comprehensive agreements, which involve a suite of services (water, wastewater, solid waste, and fire protection) rather than single-service agreements.

In the Atlantic region, a number of First Nations and municipalities have service agreements for water and wastewater, as

well as for fire protection and solid waste. Generally, there is little demand for additional service agreements in this region as most of the 33 First Nations are currently in partnership with a neighbouring community. However, there is a need to improve and renegotiate existing agreements that are either outdated or have been troublesome due to non-compliance and gaps in original agreements, including pricing and dispute resolution.

Due to its small population (approximately 30,000), Yukon offers a unique perspective on First Nations and municipal relations. Yukon is home to only eight incorporated municipalities, seven of which have neighbouring self-governing First Nations. Due to limited capacity and funding, cooperation between First Nations and municipalities is a necessity. Although several water and wastewater service agreements exist, Yukon is also pursuing different types of service agreements, such as those for recreation, to ensure the well-being of its communities and to achieve economies of scale. For more information on issues specific to Yukon, please see the CIPP Yukon appendix available on the CIPP website at <http://www.fcm.ca/home/programs/community-infrastructure-partnership-program.htm>.

2.5 Service agreement benefits

Service agreements can be seen as mutually beneficial partnerships. Such agreements can enhance First Nations–municipal relationships by fostering dialogue about joint community needs and challenges that can help improve social standards.

These agreements also provide communities with a chance to increase their capacity to work together on political and technical levels for improved services, regional health, sustain-

ability and growth. Service agreements offer an opportunity to achieve economies of scale with community infrastructure, which can make infrastructure more cost-effective and attract economic development, particularly in smaller communities.

For the purchaser of services, service agreements are an effective way to avoid involvement in the regulatory environment, particularly for water issues. This refers to the reporting burden, fines for non-compliance to standards and the confusion of the AANDC protocols versus provincial water standards. In many cases, a diminished responsibility does not have to mean a decreased capacity. Agreements may be negotiated for the employment of municipal or First Nation participants in cases where service is being purchased. In cases where a small community is receiving services from a larger community, economies of scale allow for the purchaser to receive high-quality services from a facility, which would have been too costly if pursued individually.

For the provider of services, service agreements can allow opportunities for leveraging funds for joint infrastructure improvement. As a result of joint cooperation, grants from organizations supporting municipal governments and organizations supporting First Nations governments can be accessed. The benefits can also be seen from a community perspective in terms of better community health and improved community planning. By cooperating to provide services, both communities must communicate and work closely together, which benefits both parties. Working together to negotiate services allows both communities to jointly plan activities and discuss their long-term development visions. This is especially necessary when discussing water provision where future capacity issues may result from a lack of communication and planning.

2.6 Service agreement barriers

When considering whether to enter into a service agreement, it is important to consider the following barriers as you determine if a service agreement is right for your community.

Feasibility

Although service agreements may appear to be an attractive option for achieving economies of scale and advancing public health and community collaboration, they may not be a feasible option in some circumstances. Feasibility can be limited by several factors such as distance between communities and costs associated with the project.

Large distances between communities hinder those pursuing water and wastewater service agreements. This hindrance is not only because of water pressure and chlorination concerns; it also arises because the costs associated with extending infrastructure over long distances can outweigh the potential savings through shared water treatment facilities and operations. Distance is a lesser mitigating factor when considering service agreements related to regional landfills or parks and recreation agreements as larger distances between communities can be overcome easily.

For service agreements that involve substantial investment and time such as water and wastewater agreements, a feasibility study should be completed. This would ensure that the initiative makes financial and practical sense for the First Nation and the municipality.

Capacity

Lack of capacity can be a barrier to service agreements in two ways: communities may have limited infrastructure capacity or limited human resource capacity.

Limited infrastructure capacity could present a barrier, particularly when thinking about water and wastewater service agreements. For example, an older treatment facility may have the capacity to provide only for the current population of a municipality or a First Nation and anticipated growth for ten years. If another community were to enter into a service agreement, the facility would not have the capacity to provide for the existing population and growth of both communities over the lifespan of the facility.

Human capacity can also be a barrier to service agreements, particularly when negotiating an agreement. Service agreements require a significant time investment by both communities to build relationships, discuss the terms of the agreement and work through technical concerns surrounding infrastructure and service provision. Often small communities that may have limited human resources will find this to be a challenge.

Political concerns

One of the most challenging aspects of a service agreement can be overcoming relationship and political obstacles. Lack of understanding or an unwillingness to listen and discuss issues of mutual concern can significantly impair the creation of service agreements or the effectiveness of a service agreement once it has been put into place. Ongoing communication and political cooperation must be made a priority.

The mismatched election cycle between First Nations and municipalities can present a unique set of barriers for community partnerships. Political turnover can cause a change in local priorities, lack of established interpersonal relationships between councils and lack of corporate memory regarding service agreements and relationship building efforts. Both First Nations and municipalities should maintain open lines of communication through election periods by meeting frequently or formalizing communication through a communication protocol (please see **Unit 2, Chapter 1.7.2: Communications protocol templates**).



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Unit 2

Guide to Relationship Building

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1. A guide to relationship building: Meeting and working with your neighbour

Intergovernmental relationships bind communities together in a positive way and encourage collaboration and development and help ensure potential conflict is resolved more effectively when pursuing a service agreement. Only in recent times has the relationship between First Nations governments and local governments been identified as a significant national opportunity. For much of Canada's history, provinces, territories and local governments were only marginally involved in Aboriginal issues. In the past few decades, a number of modern treaties have resulted in increased interaction between First Nation and local municipal governments. To develop a service agreement, First Nations and local municipal governments will need to continue to interact and ensure that they are doing so in an effective manner.

The next section explores principles behind creating, enhancing and maintaining harmonious and productive relationships between municipal governments and First Nations governments including common myths and tips for working effectively together.

1.1 Working with First Nations: A guide for municipalities

It is important to recognize that there is a significant amount of diversity among First Nations governments in terms of their population size, geography, capacity, income, educational attainment and autonomy. There are additional differences across Canada concerning linguistic groupings, culture, history and the extent to which traditional practices have been

maintained through policies and programs of discrimination and assimilation such as residential schools. Attention should be paid to getting to know your adjacent First Nation community individually to get a better understanding of their unique history and political and social relationships. (For more resources including common questions and answers, please see **Unit 2, Chapter 2.4: Governance structure references.**)



What is the difference between Aboriginal, First Nation, and Indian? Which word should I use?

Aboriginal refers to the original inhabitants of Canada and can be subdivided into three groups: Indians, Inuit and Métis. These groups have distinct heritages, languages and beliefs and are only linked through their indigenous ancestry.

First Nations is a term that has come into use in the last few decades to replace the term Indian, which some people find offensive. In its use, First Nations refers to an individual of indigenous ancestry who is neither Inuit nor Métis, and in many cases also replaces the terms band or community.

Although First Nations is considered more polite and respectful, this term is not used commonly in legal documentation. Historically, First Nations people were referred to as Indian, which is a term to describe Aboriginal people who are neither Inuit nor Métis.

In general, what people prefer to be referred to is individual choice. It is important that you ask these questions and get to know your contact's individual perspectives on these issues.

We hear a lot about Aboriginal rights and title. What does this mean?

Aboriginal rights refer to the practices that were in use before European contact, including unique cultural practices, traditions and customs. Legally speaking, the rights of Aboriginal peoples are set out separately in the Constitution to recognize that they are the descendants of the original inhabitants of Canada. Although the Canadian Constitution recognizes that Aboriginal rights exist, it does not define specifically what is considered an Aboriginal right.¹ Ongoing court decisions are working through resolutions to these claims.

Aboriginal title refers to the right to the land itself, not just the activities that may occur on the land. In some parts of the country, treaties dating back to the 1700s were signed setting apart lands for Aboriginal peoples; this continued across much of Canada through the 1900s. Some areas of Canada have no treaties and therefore some First Nations assert that because they did not surrender these lands to the Crown, they still have Aboriginal title to these areas. Ongoing court decisions are working through resolutions to these claims.

Both Aboriginal rights and title are considered communal rather than individual. Aboriginal title recognizes a particular community's access to land, rather than individual ownership of that parcel of land.

¹ The Constitution Act, 1982 s. 35.

Is it true that First Nations have more privileges than the rest of the population?

It is a common myth that all First Nations have many additional privileges compared with those of the general Canadian population. Commonly cited privileges include not paying taxes, receiving free services that others must pay for (such as post-secondary education), and having easier lives than those living off-reserve.

In fact, First Nations enjoy the same fundamental benefits of all Canadians such as unemployment insurance and the child tax benefit. The federal government provides First Nations with services that are constitutionally allocated to the provinces.

Life for members of many First Nations is not easier than it is for the average Canadian. Overall there is a lower quality of living for Aboriginals than that of the average Canadian. This includes shorter life expectancy; higher unemployment; higher rates of suicide, alcoholism and drug abuse; higher levels of infant mortality; and proportionally lower educational attainment.² In addition, for Aboriginals who live on reserves it is difficult to own the land on which their houses are built to the same extent that other Canadians enjoy. This offers limited stability compared to that of those living off-reserve. The federal government in cooperation with band councils thus provides, for example, additional funding for post-secondary assistance and housing to ensure that First Nations may achieve the same standard of living as other Canadians.

In the case of taxes, Inuit, Métis and non-status Indians are required to pay taxes. First Nations individuals working on-reserve with a company that is also located on-reserve are not required to pay taxes. However, all First Nations working off-reserve are required to pay both federal and provincial taxes with the exception of employees of organizations that are specifically geared toward Aboriginal people.

Myth: There are no more “real” Aboriginal peoples.

While Aboriginal people live modern lives, this does not mean they are no longer any “real” Aboriginal peoples. Many are working to preserve and promote their own identity, culture, traditional practices, values and spirituality, which vary greatly from band to band.

Many Aboriginal people still practise traditional activities such as hunting, trapping and fishing, and many have maintained a respect for, and knowledge of, their traditional territories and environments.

² For more information, see: “Fact Sheet: Top Misconceptions about Aboriginal People” by the Assembly of First Nations (AFN) in **Unit 2, Chapter 1.8**.



1.1.1 Tips for working effectively toward strong relationships

There are some general tips to keep in mind when building a relationship with a First Nations government. The following tips were written by the Committee for the Advancement of Native Employment at Indian and Northern Affairs Canada (INAC) and appeared in their publication, *“Aboriginal Awareness Guide.”*

Show respect

- It is important to not just talk to First Nations when you need something — get to know them as individuals.
- Take time to learn about community history, achievements and challenges.
- Refusing food or drink from the hosting First Nation may be considered disrespectful.
- Communicate in person rather than by email or telephone.

Communicate effectively

- Let people finish what they are saying and respect silences after someone has finished speaking.
- Be prepared to work in a highly emotional environment when discussing some issues, and be prepared to listen and not take an issue personally.
- Never refer to First Nations as stakeholders nor use the term institutionalize; both have negative associations.
- Some individuals avoid direct eye contact as a sign of respect; do not interpret this as shyness or being untrustworthy.
- Remember, keep things light! Humour is important.

Make effective decisions

- Plan a sufficient amount of time for meetings, especially if decisions need to be made.
- Try to avoid situations with authoritative decision making or imposed solutions; look for building consensus in the group, and decisions will be more legitimate.
- Individuals can become uncomfortable if asked to make decisions for the group. Oftentimes, community consultation, collective decision making, and permission to make decisions must occur.



1.2 Working with municipal governments: A guide for First Nations

Similar to First Nations communities, there is a significant amount of diversity among municipalities across Canada with regard to their population, size, geography and capacity. Therefore, when considering working with a nearby municipality for the provision of services, it is important to take time to learn the specifics of their unique community, government and needs.

Why would a municipality and First Nations want to work together?

The incentives for service agreements include economies of scale and other benefits to building partnerships, such as the following:

- Improving relationships (community-to-community, government-to-government)
- Enhancing social standards
- Providing growth and new opportunities to both municipal and First Nations communities
- Building a stronger labour force
- Increasing capacity with both political and technical staff, due to knowledge sharing
- Implementing working partnerships that become business as usual
- Accommodating regulatory changes; working together to meet standards
- Improving levels of service
- Realizing financial savings

Maintaining healthy communities and regions is in everyone's interest. First Nations and municipalities share many of the same responsibilities as their residents. In many cases, community members live on the reserve or in a municipality and have family in both communities. Thus, cooperation is important to ensure good relationships, strong communities, and improved services to community members. Cooperation between municipalities and First Nations is a way to achieve a better level of service on the large issues that require cooperation. Such issues include source water protection, recreation and some infrastructure and services projects.



Is it true that municipalities have a lot of funding because they receive transfers from provincial and federal governments and through their municipal tax systems?

Municipalities across Canada have diverse sets of issues and differing levels of capacity to deal with these challenges. Of every tax dollar collected, only eight cents go to municipal governments. With that amount they must deliver an ever-expanding complement of human and physical services. From child care to housing to social assistance, municipal governments are taking over a share of the social-service costs once borne by the federal and provincial governments. Without additional resources, these services are funded primarily through property taxes. Municipalities often face financial constraints due to the large number of services that they are responsible for providing to their residents versus the limited amount of funding that they can derive from property taxes — particularly for municipalities with small populations.

Municipalities must plan carefully to ensure that they can make the most of their limited funds. And they must deal with constraints by making trade-offs with initiatives in their communities to ensure financial well-being.

Myth: Cooperation with a municipality is not an option because the federal government does not manage it.

Across Canada, municipalities and First Nations are working together to make stronger communities, improve regional standards of living, and cooperate on services. Despite the differing levels of government, First Nations and municipalities have similar community responsibilities and concerns and are able to work together, government to government.

1.3 Tips for working effectively toward strong relationships: A guide for First Nations and municipalities

The following section outlines some quick tips that are commonly overlooked and should be kept in mind by both parties while building relationships and discussing community needs.

Ensure that you are talking to the right person

Generally speaking, members from both parties should contact their equal in the other government or community. Mayors, as political leaders, should approach the Chief of a First Nation, also a political leader. Band managers should approach Chief Administrative Officers (CAOs) as they are both heads of administration. Public works staff should feel comfortable speaking with public works staff from their neighbouring communities. This may change over time as relationships grow, but it is especially important at the beginning of a relationship to show respect and ensure your concerns are addressed in face-to-face meetings with the right person.

Distinguish the political from the technical

Conversations about community cooperation and service agreements can generally be grouped into two categories: technical concerns and political concerns. Both categories bring forward valid and varied concerns.

Political concerns include the nature of political relationships, historical tensions, governance (relationships between the four levels of government), jurisdiction and policy.

Technical concerns include management of joint facilities, service agreement negotiation, engineering standards, community health and safety needs, regulations and requirements.

Although it is extremely difficult to completely separate these items, it is easy to become side-tracked and frustrated when conversations mix political and technical concerns. By clarifying the purpose of each meeting, it makes it easier for both parties to adjust expectations.

Attend as many events as possible

Make an effort to show respect for your partner community by attending community events (e.g., gatherings, open houses, powwows) and meetings when you are invited. This is a positive way to show interest in improving government-to-government relationships and to demonstrate a willingness to build relationships between communities. If you are unable to attend, try to make an effort to follow up and ensure that you can meet or attend another upcoming event.

Joint Council Meetings

Joint Council meetings are an effective way to get political representatives together to provide updates on each other's communities, establish relationships, and cooperate on issues of mutual concern. Joint Council meetings may be informal and held over a meal or may be formalized in a communication protocol (see **Unit 2, Chapter 1.7.2: Communications protocol template**).



1.4 Community engagement

As a part of maintaining a long-term partnership, municipalities and First Nations must work together to generate awareness and engage their communities on the benefits of government-to-government relationships.

Community engagement can involve community gatherings and meetings, door-to-door information sharing, press releases, emails and information flyers. Although community engagement is by no means mandatory, it acts as a powerful mechanism:

- It improves local support of communities working in partnership.
- It addresses concerns and myths from community members.
- It helps bring about behavioural changes from residents of both communities.

These benefits ensure the sustainability of cooperation and service agreements in the long term.

The following section outlines several tips to assist in organizing successful community meetings and writing quality press and media releases to get support for your service agreement. (For more information and additional resources, please see **Unit 2, Chapter 1.8: Relationship building references.**)

1.5 Cross-cultural awareness

In the context of First Nation and municipal partnerships, it is important to consider cross-cultural similarities and differences when negotiating service agreements since each group's cultural values will shape their beliefs, perceptions and actions at individual and community levels. Often times for partnerships to be successful and service agreements to be signed, a period of getting to know each other is necessary to create a foundation of trust. This section discusses the benefits of establishing cross-cultural awareness initiatives between municipal and First Nation governments as a stepping stone to service agreements, which includes tips for communicating and topics to consider including in a cross-cultural workshop.

Is your culture oriented toward individualism or collectivism?

Individualism — tend to place high value on equality, freedom, material comfort, task completion and punctuality. Typical behaviours include frustration with lateness and what is perceived as “wasted time” and in “getting right down to business” in meetings and discussions. Non-indigenous mainstream cultures tend to be oriented toward individualism.

Collectivism — tend to value consensus, cooperation, harmony and patience. Affiliation with others and human relations are important, and so individuals are more likely to forgive lateness, and to take time to establish a relationship before getting down to business. Traditional indigenous cultures tend to be oriented toward collectivism.

Source: Aboriginal Awareness Workshop: Guide to Understanding Aboriginal Cultures in Canada, Aboriginal Affairs and Northern Development

1.5.1 Benefits of cross-cultural awareness

Cross-cultural awareness encourages the recognition of cultural differences while also noting similarities through which communication, understanding and relationships can be forged. The following points reflect the value of gaining a stronger sense of cross-cultural awareness:

Reduces misunderstandings and enhances trust

- Understanding and trust can be deepened when each government is more aware of how its and the other government's cultural background influence their perceptions, values and decisions.

Aids in planning, setting goals and problem solving

- Each government can plan and problem-solve more effectively as they will be more attentive to what is important to them and the other party.

1.5.2 Possible areas for discussion in a cross-cultural workshop

Holding a cross-cultural workshop early in the relationship-building process can provide opportunities to examine cultural views and encourage open, honest communication. This section explores possible topics for discussion at a municipal–First Nation cross-cultural workshop. Some of the following topics were written by SPARC BC and taken from the publication, *Building Bridges Together: A Resource Guide for Intercultural Work Between Aboriginal and Non-Aboriginal Peoples*. (For more resources, please see **Unit 2, Chapter 1.8: Relationship building resources**.)

Debunk prejudices and stereotypes

A cross-cultural workshop can improve awareness of previous experience with the other cultural group (e.g., length and type of contact) and break down stereotypes about each culture.

It may be useful to take time to discuss ways to challenge prejudice that exists and recognize how it is holding your relationships back:

- What stereotypes exist in your community?
- How have they been affecting your community?
- What impact do stereotypes have on you? On your partner?
- What is the best way to address these challenges in your communities?

Learn about each other's culture

This part of a cross-cultural workshop provides an opportunity for municipal and First Nation participants to learn about each other's cultural traditions, cultural protocols and unwritten social rules, and cultural events. Inviting your partnering community to an event such as a festival or powwow can cultivate greater culture understanding and respect.

Identify management style and administrative processes

Sometimes First Nation–municipal relationships can face challenges related to a lack of knowledge of political and administrative structures. Communities must also be aware of challenges that both municipal and First Nation administrations face (i.e., underfunding, lack of capacity, limited resources). Areas to discuss include the following:

- Leadership differences (staff functions/responsibilities, election process, etc.)
- Organizational process and operations (funding, decision making process, etc.) discussing your community's vision and goals

For more information about municipal and First Nations governance structures, please see **Unit 2, Chapter 2.2: Municipal governance structures** and **Unit 2, Chapter 2.3: First Nations governance structures**.



1.5.3 Applying this knowledge in your working relationship

By gaining a better understanding of your neighbouring community through some of the strategies outlined in this section, you can apply this new understanding to your working relationship and improve collaboration. There are several concepts to keep in mind:

- Remember that the core of any successful relationship is respect and trust.
- Look for common goals and opportunities to work together while identifying gaps.
- Comply with other party's negotiation protocols in a way that is comfortable for all parties.
- Appreciate that people from diverse cultures attach different meanings or importance to similar situations.
- Develop a clear understanding of how the other party defines the situation and the issues to be discussed.
- Develop a consistent method for communication throughout the negotiation process.

1.6 Checklist for positive relationship-building

The following section highlights ways in which both First Nations governments and municipal governments can ensure effective relationships. For practical application of these principles, please see **Unit 3: Guide to Service Agreements**.

☒ Be respectful

A successful working relationship will be based on a solid foundation of respect. This means taking time to learn about your partner, their values, perspectives and community. Being respectful also means carefully considering the impact of your actions on the other.

☒ Communicate openly

The best way to get to know your neighbour is to have regular face-to-face meetings where open and respectful communication is encouraged. Service agreements cannot be negotiated by correspondence; the issues are too complex for such an approach. Open, in-person discussions will help avoid misunderstandings.

☒ Create value for both parties

Creating mutual goals and keeping your eye on the big picture will help relationships move forward and help everyone strive to overcome obstacles.

☒ Have realistic expectations

Although it may be obvious, it is worth stating that the issues to be addressed in a service agreement cannot be resolved in only one meeting. The goal of the first meeting between the municipality and First Nation should simply be for each party to gain a better understanding of the other party's concerns and what may be needed to address them.

✓ Use bottom-up approaches

When working between governments, it is easy to forget that cooperation and solid relationships also need to occur at a community level. By engaging citizens in information sessions, workshops and consultations, the entire community benefits and cooperation agreements will be more widely accepted (please see **Unit 2, Chapter 1.4: Community engagement**).

✓ Practise integrity

Practicing integrity means working honestly and openly and following through on promises and obligations. It is closely linked with being trustworthy and being able to trust others, all of which are important to keep in mind while building relationships.

✓ Use resources and experts

Don't go it alone! Although the process of relationship building seems overwhelming, there are plenty of resources, contacts, and experts available to help you. They can answer any questions you may have about relationship building, dispute resolution, service agreements and community infrastructure. Refer to our chapter-end references, annotated bibliography and case study section for more information.

✓ Be flexible

While working in large groups and dealing with complex issues, it is easy to become frustrated and overwhelmed and to experience delays. By being flexible, you are being responsive to change and reducing stress and disappointment if things do not go exactly as planned.

✓ Practise equality

Make sure that everyone in the relationship feels like they are being treated fairly. If equality is not possible, ensure that there is a well-understood reason for any difference in treatment.

✓ Think long-term

Plan for the long term and establish where you would like to see your community in 25–50 years. You will then be better able to establish your priorities today and identify possibilities for collaboration in the future.

✓ Clarify decision-making processes and responsibilities

To make your partnership most effective, it is important that both parties clarify decision-making processes (i.e., consensus-based, vote-based) and that parties understand their responsibilities to attend meetings, participate in decisions and use dispute resolution techniques when necessary. It is important for everyone to understand exactly what the various actors can offer and what they cannot. By being open, it is easier to establish each actor's role in achieving shared objectives.

✓ Establish systems for dispute resolution

In cases where there are disagreements among parties, an established dispute-resolution system can help parties resolve conflict before relationships are negatively affected. For more information about dispute resolution, see **Unit 2, Chapter 3: Collaborative Dispute Resolution**.



1.7 Tools: Templates for relationship building

Making contact with your neighbour may seem overwhelming at first. How do you introduce yourself and begin to build a relationship? How can you formalize a relationship and ensure that you and your neighbour are meeting on a regular basis to discuss community development and concerns? The following tools will help you approach your neighbour or, if your communities and governments have already been in contact, help you to ensure that your communities will make time for each other on a regular basis.



1.7.1 Letter of intent template

A letter of intent is a brief letter, usually no more than one page, that outlines why and how your community would like to build a relationship with the letter recipient's community. This type of letter can be used to encourage future meetings and informal discussions where individual community visions can be discussed and ways in which joint concerns may be dealt with. A letter of intent is a broad form of communication. It can be used when communicating between high-level elected officials such as the Chief, the Mayor, the band council or the municipal council.

Note: The template provided is not a legal document and is intended for guidance purposes only.



Letter of intent

UNIT 2

[Name of First Nation or Municipality]

[Date]

[Name]

[Position (e.g., Mayor/Chief)]

[Address]

Dear [Name of recipient(s)],

I would like to introduce myself as the [position] of [Name of First Nation or Municipality].
I have been working with [Name of First Nation or Municipality] for [number of years/months].

Lately, my community has been focusing on:

[Discuss current overall objectives in your community, for example, economic development, increasing environmental sustainability, or improving services or infrastructure.]

In the next 30 days, I would like to schedule a casual [get-to-know-you meeting/breakfast/lunch/dinner] where we can learn more about each other and discuss our respective communities and our visions for the future. As we both know, it is important to know your neighbour and work together for better outcomes for both communities and the region. Please let me know if there is a convenient time for you to meet with me.

I look forward to building a relationship with you and your community.

Sincerely,

[Signature]

[Name]



1.7.2 Communications protocol template

A communications protocol agreement defines the parameters of a relationship between two or more communities. A communications protocol may also be called a memorandum of understanding, community accord, relationship agreement or communications agreement. Generally, communities that have established a mutual interest and identified common community or regional goals will enter into a communications protocol agreement. This ensures that regular meetings and ongoing information sharing will occur beyond the current terms of elected governments. It is a representation of a long-term commitment. The terms of the protocol may be as specific or vague as the parties prefer, including whether the agreement is intended to be binding or non-binding. Generally, a communications protocol will outline the following basic ideas:

Date and Parties: Signatories and when the agreement was created.

Whereas: General statements which outline why cooperating or communicating are important, statements recognizing jurisdiction and rights, any other statements which reflect the general feeling of the document.

Now therefore parties agree to the following:

- **Purpose and objectives** of the agreement
- **Principles and values:** To guide the relationship (e.g., fairness, transparency, respect, recognition)

Key interests: topics of mutual interest/concern (e.g., service agreements, roads, environmental sustainability, youth engagement, planning)

Process:

- frequency of policy and administrative-level meetings
- creation of implementation committees or working groups
- engagement between administrative and technical levels
- how to share and safeguard information
- how meetings will be chaired
- how agendas will be produced
- the process for decision making
- time/location of meetings

Dispute resolution: What to do with misinterpretation or disagreement (refer to ADR in toolkit)

Terms: how document takes effect, how it gets revised or amended, how long it is valid for

Signatures: who, when, where

A communications protocol must be tailored to meet the unique needs of both communities; sections may be added to or deleted from the template (below) as necessary.

Note: The template provided is not a legal document and is intended for guidance purposes only.

Communications protocol template

UNIT 2

THIS COMMUNICATIONS PROTOCOL made effective as of [date]

BETWEEN: [Name of First Nation or Municipality]

[Address]

(hereinafter called the “First Nation”/“Municipality”)

AND: [Name of First Nation or Municipality]

[Address]

(hereinafter called the “First Nation”/“Municipality”)

(collectively, the “Parties”)

WHEREAS:

- A. This Communications Protocol is designed to establish a positive working relationship based on common local interests.
- B. Good communication is essential for maintaining a working relationship and reaching mutual agreement on any subject.
- C. The Parties recognize that working together pursuant to a cooperative government-to-government relationship will facilitate the sharing of information, improve communications, and establish a solid foundation for future planning.
- D. There is value to both Parties in working together on a number of practical items in each community.

1.0 GOVERNING PRINCIPLES OF COMMUNICATION

- 1.1 The Communications Protocol represents that the First Nation and the Municipality shall work together with mutual respect and recognition.
- 1.2 The Parties agree to open and frank communications with each other on areas of mutual interest.
- 1.3 There is a commitment by the First Nation and the Municipality to meet [*on an ongoing basis, at least quarterly, or more frequently as desired*] to discuss issues of common concern and interest.

2.0 JURISDICTION

- 2.1 The Parties endeavour to understand and respect each Party’s present and future jurisdiction and each other’s unique points of view.



3.0 TERM AND TERMINATION

- 3.1 This Protocol will remain in effect until [Date] or until replaced by the Parties with a successor agreement or is terminated by one of the Parties pursuant to section 3.2;
- 3.2 This Protocol may be terminated by either Party on [Number of months] months prior written notice to the other Party.

4.0 MUTUAL CONFIDENTIALITY

- 4.1 Each Party will take all prudent measures to ensure that any information, including traditional knowledge, documents, reports or other material (hereinafter called “information”) provided by it to the other Party pursuant to or in connection with this Communications Protocol is treated as confidential and is not disclosed to any person except:
 - a. as may be required by law;
 - b. as otherwise consented to in advance by the other Party.
- 4.2 Without limiting the generality of Section 4.1, each party agrees that to ensure the foregoing confidentiality obligation is met, it will, from time to time, either in writing or verbally, expressly identify information as confidential or non-confidential to assist the other Party in fulfilling its confidentiality obligation.

5.0 REPRESENTATIVES

- 5.1 The Parties acknowledge and agree that they shall each, within 30 days of the signing of the Protocol, appoint a principal representative who shall initially be [Position in the band government; e.g., Chief] from the First Nation and [Position in the municipal government; e.g. Mayor] from the municipality as well as an alternative representative to act on behalf of the principal representative in the event the principal representative is unavailable.

6.0 COMMUNICATIONS FUNCTIONS

- 6.1 The Parties will dedicate the resources necessary to engage effectively in the process and will work together to ensure that the parties have a full understanding of each other’s capacities, traditional roles, responsibilities, and current projects.
- 6.2 The Parties will make best efforts to ensure staff resources are available to implement this Communications Protocol.

7.0 PUBLICITY

- 7.1 The Parties acknowledge and agree that all communication regarding this Communications Protocol and the matters set out herein will be jointly agreed upon prior to any public releases, subject to each Party’s respective legal rights.

8.0 AMENDMENTS

- 8.1 This Communications Protocol may be amended from time to time by written agreement by both the Municipality and the First Nation to reflect changes in the relationship between the parties.

9.0 NOTICE

- 9.1 The address for delivery of any notice or other written communication required or permitted to be given in accordance with this Agreement, including any notice advising the other Party of any change of address, shall be as follows:
- (a) to Municipality:
[Provide Address including the attention the letter should be directed to and other relevant contact information]
 - (b) to First Nation:
[Provide Address including the attention the letter should be directed to and other relevant contact information]
- 9.2 Any notice mailed shall be deemed to have been received on the fifth (5th) business day following the date of mailing. By notice faxed or emailed will be deemed to have been received on the first (1st) business day following the date of transmission. For the purposes of Section 9.2, the term “business day” shall mean Monday to Friday, inclusive of each week, excluding days that are statutory holidays in the Province of [name of province].
- 9.3 The Parties may change their address for delivery of any notice or other written communication in accordance with Section 9.1.

10.0 GENERAL TERMS

- 10.1 This Communication Protocol does not affect any Aboriginal right, title or interest of the First Nation.
- 10.2 This Communication Protocol does not prejudice or affect each of the Parties' respective rights, powers, duties or obligations in the exercise of their respective functions.
- 10.3 This Communication Protocol is in addition to any other agreements that already exist between the Parties and is not intended to replace any such agreement. It is intended to indicate the Parties' intention to work co-operatively together to resolve issues of mutual concern.
- 10.4 The Parties agree that it is not intended to be a legally binding agreement, except for the obligations in Section 4.1 above.



IN WITNESS HEREOF the Parties have signed the Communications Protocol effective as of the date first written above.

By:

[Signature]

Print Name: _____

Title/Position: _____

By:

[Signature]

Print Name: _____

Title/Position: _____

1.8 Relationship building references

Fact Sheet: Top Misconceptions about Aboriginal People

Assembly of First Nations (AFN)

This document is a concise guide to addressing common myths and stereotypes about Aboriginal people in Canada. It also contains a list of resources for further information.

Building Bridges Together: A Resource Guide for Intercultural Work between Aboriginal and Non-Aboriginal Peoples

SPARC BC

This publication offers tips for addressing racism and stereotyping in intercultural relationships. Tools and questions to help better understand how these issues affect relationships are presented throughout the document. A number of case studies regarding overcoming obstacles in relationship-building are showcased.

Towards Sound Government to Government Relations with First Nations: A Proposed Analytical Tool

Institute On Governance, John Graham and Jake Wilson

The purpose of this paper is to answer the questions “What constitutes good government-to-government relationships within Canada’s federal system?” and “How does the understanding of such a relationship have to be modified or refined to account for the special place of First Nations in Canada?” By addressing these two questions, the document provides parties with a tool to analyze more effectively the initiatives being proposed by governments. This tool provides a series of criteria and related questions organized around five good governance principles that are based on work done by the United Nations Development Program (Fairness, Direction, Legitimacy and Voice, Accountability, and Performance).

Building Trust: Capturing the Promise of Accountability in an Aboriginal Context

Institute On Governance

This paper discusses governmental accountability.

Aboriginal Awareness Workshop: Guide to Understanding Aboriginal Cultures in Canada

Indian and Northern Affairs Canada (now called Aboriginal Affairs and Northern Development)

This booklet provides background information about Aboriginal history, culture and communities in Canada. Some information covered in this resource includes Aboriginal perspectives on history, Aboriginal and treaty rights, Aboriginal constitutional matters and guidelines for communicating across cultures. Individual modules of this guide are also available for the following provinces and regions: Alberta, Atlantic Canada, British Columbia, Manitoba, Northwest Territories and Nunavut, Ontario, Saskatchewan, and Quebec.

**Aboriginal Awareness Guide**

*Indian and Northern Affairs Canada, (now called Aboriginal Affairs and Northern Development)
BC Regional Office*

This document provides basic information about sensitivity and cultural awareness when working with Aboriginal people. Tips on communication, stories and a pronunciation guide for all First Nations in British Columbia are included.

First Nations Communication Toolkit

Indian and Northern Affairs Canada (now called Aboriginal Affairs and Northern Development)

This toolkit contains tips for creating a communications strategy and developing communications strategy components including media releases, community meetings and engagement, and communications planning.

Building Relations with First Nations: A Handbook for Local Governments

Lower Mainland Treaty Advisory Committee (LMTAC)

This handbook provides a concise summary of reference papers, reports and examples that explore new and innovative approaches to establish positive intergovernmental relations between neighbouring First Nations and local governments.

Alberta Native Friendship Centres Association Common Ground Facilitators Toolkit

Alberta Native Friendship Centres Association

The Common Ground Project is a relationship-building effort that is based on traditional Aboriginal perspectives, customs and processes designed by the Alberta Native Friendship Centres Association. Although its focus is on municipalities engaging urban Aboriginal populations, it provides great resources for community engagement, relationship building, and working with a variety of stakeholders in a community environment.

2. Municipal and First Nations governance structures

To begin to understand how First Nations and municipalities can work together to provide services, it is necessary to understand:

- The basic structure of the government
- The level of authority within the government
- The functions of the government
- The services that the government can provide
- The revenue sources of both forms of government

This section clarifies roles and responsibilities and provides a comparison between First Nation and municipal governments so that service agreements can be approached more effectively.

2.1 Similarities and differences

By examining each system of governance and the services that each government provides to their community members, it is clear that First Nations and municipalities have several key similarities. These similarities make collaboration an effective way to ensure communities are achieving their goals.

Communities across Canada have similar problems with urban–rural divide, and the capacity and funding that is dictated by community size and remoteness. For urban municipalities and First Nations' band councils are increasingly partnering in their urban areas. Band councils often have common interests in issues pertaining to the environment, provision

of services, and land-use planning. Municipalities and First Nations have many parallel government structures and are responsible for providing many of the same services to their residents. This makes collaboration for services a reasonable option for delegating responsibilities and achieving goals.

The following chart provides a quick summary of similarities and differences in governance structures. For more information about specific governance structures, please see **Unit 2, Chapter 2.2: Municipal governance structures**, **Unit 2, Chapter 2.3: First Nations governance structures**, and **Unit 2, Chapter 2.4: Governance structure references**.



Table 2: First Nations versus municipal government structures and services

	First Nations	Municipality	Comparison
Legislation	federal <i>Indian Act</i> treaties self-government	provincial municipal acts	Both responsibilities dictated by a higher-level body, whether that be the provincial government and municipal acts, or the federal government, treaties, and the <i>Indian Act</i> .
Local government	band council	municipal council	Band councils and municipal councils play a similar role in terms of their decision-making authority.
Head of local government	Chief	Mayor Reeve Chief Elected Official	Chiefs and Mayors play a similar role in terms of their decision-making authority.
Regional governance	tribal council	regional district commission metropolitan community	Both may partner with other governments to form regional bodies to discuss issues of mutual concern.
Head of administration	Band manager	Chief Administrative Officer (CAO)	First Nations and municipal governments rely heavily on their respective administrations for necessary program delivery and support.
Services provided	animal control band council resolutions business licensing elections establishment of user fees fire protection forest protection housing maintenance hunting and fishing regulation immunization and quarantine land-use planning law and order lease land management management of intoxicants residential regulation road and bridge construction solid waste collection storm water street lamps survey of lands taxation traffic control water and wastewater zoning	animal control bylaws cemeteries community programming emergency planning fire protection land management local roads managing local elections parks and recreation planning policing preparation of budgets public libraries public transit regulation (building permits) sidewalks snow removal solid waste collection storm water street lamps survey of lands taxation water and wastewater zoning	<p>Municipalities and First Nations experience a great deal of autonomy. This in terms of establishing local priorities and making decisions on the best way to provide their communities with necessary services and ensuring residents' well-being. First Nations and municipal governments provide key services such as water and wastewater, solid waste management, fire protection, and land-use planning.</p> <p>A key difference in terms of law enforcement is that municipalities will often create bylaws to tailor laws to local needs and concerns. The decision to pass the bylaw lies strictly with the municipal council. A First Nation will more frequently pass band council resolutions as they may be passed solely with the approval of the band council. However, bylaws must be submitted to Aboriginal Affairs and Northern Development (AANDC) for approval and are thus much more time-consuming and tedious.</p>
Funding	federal (transfers, funding agreements) tribal councils organizations (grants)	taxation provincial transfers organizations (grants) federal grants	First Nations and municipal governments are responsible for ensuring that their initiatives are backed by funds, whether that is through taxation, user fees, or transfer payments from other government bodies. All municipalities receive the most significant source of funding from property taxes and business taxes. However, not all First Nations have chosen to tax their members or charge similar rates of user fees for services.

Source: Community Infrastructure Partnership Program, CIPP, January 2011.

2.2 Municipal governance structures

The way municipalities are referred to varies greatly from province to province. They can be defined as any local government below the provincial level with the most significant being a municipality. Some other common examples include cities, towns, regional districts, townships, and metropolitan municipalities. Across the country, close to 3,700 municipal authorities deliver services to local communities.

2.2.1 Municipal acts and ministries

Each province is responsible for its municipalities and organizes those municipalities under a provincial Municipal Act, which outlines the roles and responsibilities of municipal governments in relation to the provincial government.

Due to this arrangement, municipal structures differ depending on the province. However, each province has a legislative assembly that is responsible for creating municipalities, altering borders and modifying legislation. Each province has a ministry that is responsible for municipal affairs, which includes enforcing general rules surrounding municipal operations and taxation.

2.2.2 Municipal councils

Mayor, Reeve or Chief Elected Official

The head of the elected municipal council can be referred to as a Mayor, Reeve, Chief elected official, or head of council depending on the province. In some cases, names differ within the province. In this document, we refer to this position as the Mayor. The Mayor is head of the municipal council, although he or she has little independent control. Mayors chair all meetings, can attend any special committee meetings and may provide recommendations to council. Mayors act as the spokesperson and as the figurehead of the council and municipality. The Mayor is elected by the community at large.

Municipal council

The municipal councils are responsible for a variety of services including transportation, road maintenance, parks and recreation facilities, land-use planning, local economic development, wastewater treatment, potable water provision, solid waste and recycling programs, some social services, education and in some cases local health services. They also have the power to subcontract a service. For example, the city could hire a private company to collect waste rather than running its own waste collection program. Every municipal council will have different priorities or focus areas based on local needs, current provincial policies and local traditions.

In many cases, the municipal council will form a series of committees that are responsible for directing municipal public service. The number of committees will be completely dependent on the size of the municipality and the municipality's needs. The councillors on each committee will report back to the municipal council and make recommendations.

Municipal councils include the Mayor and councillors for a municipality.

Councillors

Councillors are elected differently in each municipality, but there are two primary ways. In the first system, municipal councillors are elected at large. This means that all voters within a municipal boundary will select a predetermined number of councillors out of all of the candidates in the entire municipality. For example, if there are six councillor positions and ten candidates running in the election, the six candidates with the overall highest number of votes will get the positions.

The second system involves partitioning the municipality into wards or sections. Each ward may have one or in some cases two councillors. Voters in each ward may only vote for the candidates who are running for election in



their ward. The candidate(s) with the highest number of votes in each ward will form the municipal council.

Regional district councils

Regional district councils are made up a series of elected municipal officials from several municipalities who have been appointed to represent their municipality on the regional district council. In some cases, individual municipalities may have a separate election to choose who should represent the municipality at the regional level. Regional district councils have a variety of responsibilities as they relate to the overall well-being of the region. For example, this could include medium- and long-term planning for infrastructure, water management, public safety and regional roads.

Special authorities

Special authorities are more autonomous than a regional district council. Municipalities will voluntarily cooperate on specific issues where common interests are shared and resources can be pooled to make for more effective service delivery. In many cases, authorities will exist for solid waste collection, recycling and hazardous waste programs, and public transit. A board of directors, made up of elected officials from the participating municipalities, controls special authorities.

Metropolitan community councils

Metropolitan community councils consist of several municipalities and are therefore headed by a council, which is made up of elected officials who have been appointed to represent their community. Metropolitan communities are responsible for policies related to regional planning, economic development, solid waste, public transit and equipment and infrastructure for the metropolitan community. Metro Vancouver Regional District and the Quebec Metropolitan Community are examples of metropolitan communities.

2.2.3 Municipal administration

The Mayor and council ensure the creation of policy and steer the direction of the municipality. However, the municipal administration is responsible for ensuring that all the services and activities that the municipality must or decides to undertake are administered. The employees who make up a municipal administration have a wide variety of skill sets. They include accountants, fire fighters, public works personnel, community planners, animal control staff, secretaries, engineers, truck drivers and recreation directors.

Chief Administrative Officer (CAO)

The Chief Administrative Officer is responsible for ensuring that all policies and services are delivered smoothly. Some tasks that a CAO may have are drawing up bylaws, preparing agendas and minutes, publishing official notices and providing information to the public. The CAO acts as the connection between the Mayor, council and the municipal administration. They also may provide advice to the council and represent the council in negotiations with other governments or agencies.

2.2.4 Municipal services

Each province has a municipal act, which defines specifically which services each municipality is responsible for. It is often difficult to completely delineate which responsibilities are held solely by the municipality or what should be taken care of by the provincial or territorial governments or the federal government. The level of service provided by each municipality varies greatly across Canada. It is completely dependent on the size of the municipality and what level of services the municipality may afford. For example, some municipalities can afford a full-time fire department while smaller ones may have a volunteer fire department. A full list of services is provided in **Table 1** in **Unit 2, Chapter 2.3: First Nations governance structures**.

Shared municipal and provincial services

Some services are split between the province and the municipality, although some provinces stipulate that the municipality or the province alone is responsible for the following services. For the most part, these services are areas of joint responsibility:

- emergency response and ambulance services
- preservation of agricultural lands
- policing services

2.2.5 Municipal funding

Taxation

Municipalities, unlike the federal and provincial governments cannot charge personal income tax and taxes on corporations; therefore, municipalities tax property within their boundaries as a source of revenue. Local authorities set tax rates based on their average annual expenditures and therefore property tax rates vary greatly across Canada. Municipalities also may charge municipal taxes to cover the cost of services (such as solid waste collection, recycling and snow removal) or on a pay-per-use basis (such as entrance fees to a recreation facility).

Transfer payments

Municipalities also receive transfer payments from the provincial government. In some cases the payments can be used as the municipality deems appropriate. In other cases funding may be granted to the municipality with specific programs and goals in mind.

2.3 First Nations governance structures

Today, the structure of the Chief and council governance on First Nations reserves reflects the changes enforced by the British and Canadian governments since the 19th century. This structure became formalized in the *Indian Act*. Since the initial formalization, band council structures are increasingly flexible in terms of the extent to which traditional political structures and decision-making processes are observed and the types of issues that band councils deal with.

Due to the relative flexibility that has been realized, First Nations governance structures vary greatly across Canada. While some exist with minimal governance, others are completely self-governing, although most fall somewhere in between.

Today, many First Nation communities manage multimillion-dollar administrative operations that deliver services in the areas of economic development, health, housing, public works, recreation, education and social services.

2.3.1 The *Indian Act*

The *Indian Act* outlines the procedure for selecting a Chief and council. The Act does not provide a framework for the separation of political and administrative functions in a band nor the way in which finances will be managed. First Nations must deal with growing responsibilities in band administration, increased pressures of transparency and accountability and increased complexity in governance. This causes a fair amount of diversity in the ways in which bands are run based on band policy and unique administrative organization.



2.3.2 Chief and council

Band council regulations are outlined in Section 74 of the *Indian Act*. According to the *Indian Act*, each band will have one Chief who is elected either by majority vote by the community at large or by majority vote of the elected councillors. After a Chief is elected, he or she is still considered a councillor and is able to vote in community affairs. Councillors may be elected by the community at large or by electoral wards or sections. By default, all bands vote at large for their council members, unless a band-wide referendum was held to determine that the reserve should be divided into wards or sections. According to the *Indian Act*, there must be at least one councillor for every 100 band members, although each band council may have a minimum of two councillors and a maximum of 12 councillors.

Chief and council are elected for two-year terms in accordance with the *Indian Act*. According to Aboriginal Affairs and Northern Development Canada (AANDC), there are three ways in which a Chief and council may be selected: using an election process outlined in the *Indian Act* (252 bands); using a custom system that was developed by the community (333 bands); and finally, using a system that was developed under a self-governance agreement (29 bands).

Custom systems may refer to either a system of hereditary leadership in which no elections are held or may refer to election protocols that have been developed and ratified by the community. Custom systems may not be reflective of pre-European contact forms of governance, but often provide local contextualization of the *Indian Act* processes. Some communities may not have formalized protocols; they may simply follow a system that was agreed upon informally and has been in place for many years.

2.3.3 Tribal councils

Tribal councils act as an important form of First Nations governance. They consist of a grouping of bands from a region with similar interests that join together on a voluntary basis. Tribal councils can offer services and programs to their member First Nations and may form agreements with other federal departments such as Health Canada and Natural Resources Canada.

Representatives of tribal councils are usually Chiefs or elected band council members and are extremely flexible as to the issues they address. AANDC has devolved many of its advisory functions to tribal councils and they may as a result be responsible for economic development, comprehensive community planning, technical services, and band governance issues. Funding from AANDC is based directly on the services that the tribal council provides. There are approximately 78 tribal councils across Canada serving 475 First Nations.

2.3.4 Band administration

The Chief and band council steer the direction of the community and make decisions pertinent to a community's well-being. However, the band administration is responsible for ensuring that all the services and activities that the council must or decides to undertake are administered to the community. Band administration employees have a wide variety of skill sets. They include financial experts, fire fighters, day care workers, public works personnel, community planners, animal control staff, social services directors, secretaries, engineers and truck drivers.

Band manager

The band manager is the head of the band administration and is responsible for ensuring that all policies and services are delivered smoothly to the First Nation. Some tasks that a band manager may have are preparing

agendas and minutes, advising the band council, publishing official notices and providing information to the public. The band manager works closely with the Chief, council and band administration staff. He or she may provide advice to the council and represent the council in negotiations with other governments or agencies. Occasionally, the band manager may also be a member of the band council.

2.3.5 Social structure

Elders

Elders are men or women in the community whose wisdom about culture, spirituality and life is recognized. Community members traditionally value the input of Elders in matters related to the community, whether such matters concern traditional or contemporary issues.

2.3.6 Band services

Section 81 of the *Indian Act* outlines the responsibility of the band council to provide services to the band. It also details the scope to which bands have bylaw-making authorities; this section of the *Indian Act* contains the majority of local responsibilities. Section 83, which was later amended with the Kamloops Amendment, expands on the band's ability to tax lands, leased lands and businesses. A full list of services outlined in the *Indian Act* is provided in **Table 2** in **Unit 2, Chapter 2.1**.

2.3.7 Band funding

Taxation and user fees

Section 83 of the *Indian Act* provides that band councils have the power to establish property tax regimes on reserve. To collect property taxes, the band council is required to create several bylaws that must first be approved by the Minister of AANDC upon the recommendation of the First Nations Taxation Commission. The bylaws that must be passed include the Real Property Tax and Assessment Bylaw and the Annual Rates Bylaw. Because this is an optional source of funding that must

be instigated by the band council of each First Nation, not all bands will have revenue from property taxation. Currently, 120 First Nations charge property taxes across Canada.

Band councils, under Section 81 of the *Indian Act* also have the ability to institute user fees for services such as electricity, water, wastewater and solid waste collection. The extent to which a band council decides to charge user fees varies from band to band.

Transfer payments

AANDC provides transfer payments to First Nations governments for the provision of programs and services, which the First Nation is responsible for providing to its residents. Generally, this funding is linked to funding agreements, which stipulate the specific terms and conditions that must be met.

Funding agreements

Funding agreements have terms and conditions attached to them that may include stipulations. These could include the provision of records, financial reporting, program reporting and provision of specific project goals and requirements (e.g., policy development and training).

Contribution agreement

A contribution agreement is an agreement under which the party that undertakes the work (provides the services, etc.) receives a refund of actual expenditures for a specific project.

Flexible transfer agreement

A flexible transfer agreement is an agreement where funding is provided in advance of a project's completion. The band may retain any surplus funding provided that the terms and conditions of the agreement have been fulfilled.

Grant

A grant is an unconditional transfer of funds from the federal government to an individual band.



2.4 Governance structure references

First Nations Governance

Aboriginal Affairs and Northern Development

This website provides more information about First Nations governance structures in Canada and explains which functions of First Nations governments are supported by AANDC. Additional information about tribal councils and other forms of First Nations governance can be explored by following the links provided on the website.

Your Guide to Municipal Institutions in Canada

Federation of Canadian Municipalities

This publication provides an overview of the roles of municipal governments across Canada and provides some province-to-province comparisons on the way municipalities are managed. Information about roles, funding and services are discussed.

Local Government in British Columbia: A Community Effort

Union of British Columbia Municipalities

This publication provides an overview of the roles of municipal governments in British Columbia. Information about roles, funding and services are discussed.

Interactive Map — First Nations Communities in Canada

Aboriginal Affairs and Northern Development

This map includes all First Nations communities in Canada and includes reserve boundaries and, when zoomed in, the names of the communities in the area. You can click a reserve name to view that community's profile, which includes population, Chief, electoral system, address and links to band websites and other websites of interest. You can also click the link, First Nation Profile, to view the telephone and fax numbers.

First Nations of Ontario Community Profiles

Chiefs of Ontario

This website provides a variety of facts about most of the First Nations in Ontario. Although most statistics are also available on the AANDC community profiles website, this site provides profiles of service agreements and other areas of cooperation (education, for example) with neighbouring communities.

3. Collaborative dispute resolution

Municipalities and First Nations should have a good understanding of the principles of dispute resolution. These principles will help them to work through disagreements in an effective manner without damaging their relationship or reversing any steps accomplished in terms of cooperation and trust.

Dispute and conflict resolution provide excellent opportunities for individuals to work together, brainstorm new ideas and make improvements to existing structures. However, the ability of a group to recover from disagreements is directly linked to their willingness to participate in a variety of methods to achieve a positive outcome.

This chapter provides collaborative dispute-resolution tips and resources for communities no matter which of the following stages of service agreement development they are at: relationship building, negotiating the service agreement terms, implementing the agreement or during the service agreement renegotiation process.

3.1 Prevention

Establishing a proactive relationship at the beginning of a relationship by addressing the interests of both communities should be the first priority. This can help communities avoid disputes and strains to their relationship. The most common and effective methods for preventing potential conflicts are as follows:

■ Consensus building

When working with a municipal or First Nation partner, the objective should be that both parties work on consensus-based decisions while relationships and service agreements move forward. By ensuring that all parties are on the same page and by negotiating each issue within the group, resentment that could develop by majority voting processes can be

avoided. Although consensus building is initially more time-consuming, it may save time in the long run.

■ Negotiated rule making

Negotiated rule making means agreeing on procedures for how discussions will take place. Some examples include how often meetings will occur, how the agenda will be set and how decisions will be made (e.g., through consensus or by voting). By negotiating rules, information-based disputes are least likely to occur.

■ Joint problem solving

Joint problem solving involves addressing all issues that arise in an open and timely manner. By bringing concerns to the table, all parties are, at the very least, aware of problems that need to be addressed before they get out of hand.



■ Consultation and engagement

The consultation process is often part of a regular decision-making process. It is also a dispute-prevention mechanism as it can ensure that all partners and communities are aware of the decisions being made and that they have a chance to voice their concerns. Consultation is the basis of a variety of procedures referred to as public consultation, public participation and public involvement. Methods of consultation range from formal public hearings to more engaging or interactive techniques such as workshops and advisory committees. The final decision making is up to the parties involved — and if the results from consultation are taken seriously, the negotiation method can prevent communities from feeling alienated from the decision-making process. Consultation processes often lead to high expectations on the part of the parties being consulted. They may also lead to feelings of rejection or abuse if the consulted parties feel that their concerns have not been heard.

■ Cross-cultural awareness

Disputes can occur due to cultural misunderstanding or misinformation. By building cross-cultural understanding between communities, these disputes are less likely to occur (please see **Unit 2, Chapter 1.5: Cross-cultural awareness.**)

3.2 Alternative dispute resolution

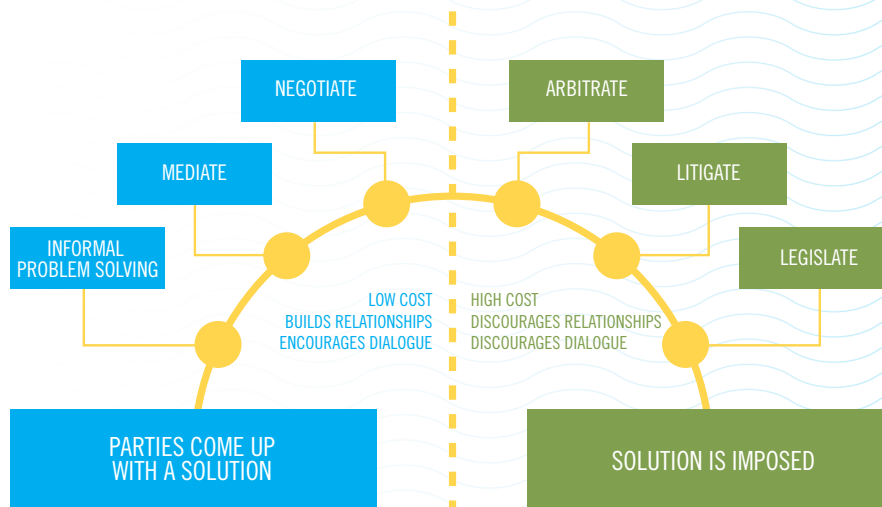
Alternative dispute resolution (ADR) refers to a number of methods that parties can use to assist in the resolution of disputes outside the court system. The processes for each method vary in terms of third-party involvement and consensus building, and in how binding the decision and resolution process is.

ADR has several advantages over traditional forms of dispute resolution. Its high degree of involvement by the parties in the resolution process creates ownership and mutually acceptable remedies. Thus, it prevents winners and losers, which often result from court solutions. ADR processes are flexible allowing disputing parties a greater ability to work creatively toward solutions in a private setting. An effective use of ADR will make both parties feel as if they are actively participating in the creation and maintenance of positive relationships.

3.3 Mechanisms and methods for dispute resolution

Despite best efforts to work preventatively, conflict inevitability arises in some relationships. The dispute resolution process can be plotted on a continuum as shown in **Figure 1**. Ideally, parties should work from the left side of the continuum to the right side when building relationships, setting the terms of service agreements and then renegotiating or resolving disputes resulting from the terms of a service agreement. This means working through party-based decision making to third-party mediation and finally to third-party binding assessment of conflicts. Remember, if an ADR process must be used, the objective should not be to suppress conflict, but to resolve current conflict and prevent future conflict.

Figure 1: Dispute resolution continuum



Source: Adapted from Dispute Resolution Services, Alberta Municipal Affairs.

The following definitions are to help guide you through the ADR process. These descriptions are organized along the lines of the continuum (left to right in the diagram above), and can be subdivided into three overarching approaches:

- Direct discussion and negotiation occurs between the parties with no third-party assistance.
- The parties make third-party-assisted negotiations and decisions.
- Parties provide input and a neutral third party provides a judgment (ruling) or non-binding findings.

By working through the dispute resolution continuum in this manner, costs can be reduced, parties can feel more ownership in decisions and future conflict is less likely to occur.

1. Direct discussion and negotiation occurs between the parties with no third-party assistance

Bargaining

Bargaining refers to a process whereby parties reach a mutually acceptable agreement. Bargaining often occurs informally. For example, a decision-making body may choose to change

its position to achieve the support from the other party to create more agreement within the group. Bargaining represents the first step of a resolution process as it can occur informally while providing parties with a sense of ownership and cooperation in the resultant decisions. However, this process is not always effective when dealing with difficult or complex issues where parties have polarized positions.

Negotiation

Negotiation is an explicit form of bargaining. Negotiations occur when parties enter into a direct exchange, typically involving face-to-face meetings, in an attempt to find some resolution to their differences. Negotiation is based on the idea that all parties agree to seek an outcome acceptable to all involved by altering positions and compromising. Should negotiations fail to result in an agreement, a neutral third party (e.g., a facilitator or mediator) may be used to lead discussions.



2. The parties makes third-party-assisted negotiations and decisions

Facilitation

Facilitation involves an independent third party to help parties understand each other's concerns in a neutral manner. Facilitation does not necessarily have to be a decision-making process but can assist the parties in identifying the issues, the impact of the options, and the next best alternatives available to them. This process is advantageous because it may offer insights into each viewpoint without pressure to come to a decision.

Mediation

Mediation is similar to negotiation but includes the assistance of a third party or mediator. The mediator must be independent from the parties and have no vested interest in the outcome of the dispute. Parties should select a mutually acceptable mediator. The process of mediation involves three main tasks: first, to establish mediation process expectations; second, to represent and relay the interests, concerns and ideas of one party to the other; and finally, occasionally act as a facilitator in joint discussion sessions. The mediator only provides assistance to the parties as they address disputes and has neither decision-making powers nor enforcement powers.

3. Parties provide input and a neutral third party provides a judgment (ruling) or non-binding findings

Fact-finding

Fact-finding is a process that enables disputing parties to have their concerns examined by a neutral third party who will then recommend a settlement based on facts. Underlying this process is the assumption that the judgment of an independent person will put pressure on the parties to accept

a compromise. The fact-finding process is usually less formal than arbitration because the conclusions of the fact-finder are not binding on the parties. In some cases, fact-finding may worsen the conflict as it may lead to the introduction of additional issues that were not previously identified as a problem.

Conciliation

Conciliation is a combination of the fact-finding and mediation processes. Typically, a conciliator or conciliation board is selected to assist in the settlement of a dispute and produces a report. This process can attempt to settle disputes without bringing the disputing parties into a joint meeting. Instead, independent meetings can be held and information relayed to deliver positions in a less politically and emotionally charged manner. If the conciliator or board is successful in mediating an agreement between the parties, the conciliator report documents the settlement. If their settlement efforts are not successful, the report will still be the conciliator's recommendations of a settlement and the next steps, which is similar to a fact-finding report.

Arbitration

Arbitration is a formal adjudicated process with an arbitrator, or in some cases a panel of arbitrators, acting as a judge. Disputing parties present their arguments and evidence and then the arbitrator makes a decision on behalf of the parties. This process results in an independent review of the facts of the dispute by an independent third party who makes an informed decision based on the facts, rather than on emotions and politics. Arbitration should be used only as a last resort for complex and ongoing disputes as the arbitration process tends to create winners and losers.

3.4 Aboriginal perspectives on ADR

In their document *Dispute Resolution Systems: Lessons from other Jurisdictions*, the Institute on Governance presented an interesting perspective on non-Aboriginal versus Aboriginal approaches to conflict prevention and approaches to systems of justice. Admittedly, it is difficult to generalize about Aboriginal perspectives and approaches because there is great cultural variation across Canada. However, a common thread seems to be the emphasis on proactive measures taken to prevent conflict and to ensure the maintenance of harmonious existence.

While non-Aboriginal systems are designed to address problems as they arise, Aboriginal systems tend to reflect the maintenance of a peaceful society. Rupert Ross, a Crown Attorney reflects that, “Not being aware of the fact that the two spotlights illuminate different aspects of the same overall problem, we of the non-Aboriginal system are puzzled when Aboriginal responses to our justice questions fail to shed light on the kinds of things that we expected to see, but show us very different things instead.” Therefore, acceptable measures for resolving disputes will incorporate both of these perspectives on conflict and the attainment of justice.

3.5 ADR references

Alternative Dispute Resolution: Aboriginal Models and Practices

Michelle Cameron, Ministry of Children and Family Development

This document discusses different dispute resolution world views and points out that culture should neither be undervalued nor overvalued. Because diversity makes providing an Aboriginal perspective difficult, the authors provide a number of case studies. These case studies mostly relate to child and family services, regarding the integration of more culturally appropriate models into dispute resolution.

Communities in Cooperation: A Guide to Alternative Dispute Resolution for First Nations and Local Governments in British Columbia

First Nations Summit and Union of British Columbia Municipalities

This guide is intended to assist elected officials, staff or any party working with municipalities, regional districts or First Nations governments in resolving differences without resorting to the courts.

A Review of Dispute Resolution for First Nations and Local Governments in BC

Union of British Columbia Municipalities (UBCM)

This document was produced by the Union of BC Municipalities (UBCM) and the First Nations Summit (FNS) in British Columbia. It was created to help First Nations and local governments avoid conflict when and where it may arise, to have tools available to the parties to efficiently and effectively resolve the issues in a manner that serves the best interests of the government jurisdictions involved.



Dispute Resolution Systems

Institute on Governance (1999)

This document provides an overview of the major themes found in the literature of direct relevance to their task, balances the lessons drawn from the literature with those learned from case studies of dispute resolution systems and makes recommendations on how the information developed in this study can be put to best use.

Singing up the Sacred: Aboriginal Communities Train the Trainer in BC

Sally Campbell

This document discusses lessons learned from working with First Nations on dispute resolution processes. In particular, the lessons learned about integrating traditional practices and the different qualities that integrating these approaches brings to a group dynamic.

Dispute Resolution Systems: Lessons from other Jurisdictions

The Institute on Governance

This paper outlines best practices of dispute resolution by providing a literature review and lessons from across Canada. Challenges with integrating Aboriginal perspectives on ADR into traditional forms of ADR are discussed.

ADR in an Aboriginal Context

Canadian Human Rights Commission

This document discusses challenges to intercultural ADR including differing world views, different forms of knowledge and historical tensions.

Mediator Roster — British Columbia

British Columbia Mediator Roster Society

This website provides a list of qualified mediators across the province of BC including contact information and the regions of the province that they are willing to serve.

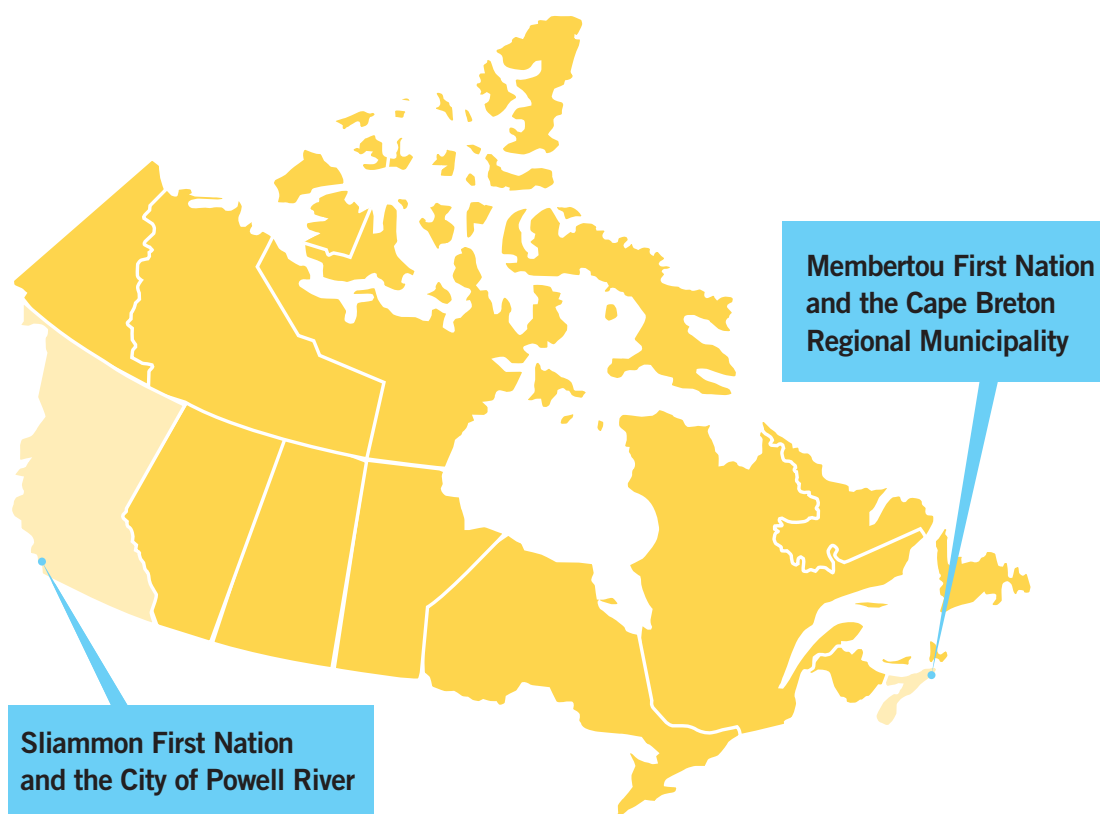
Intercultural Dispute Resolution in Aboriginal Contexts

Catherine Bell and David Kahane, University of British Columbia Press

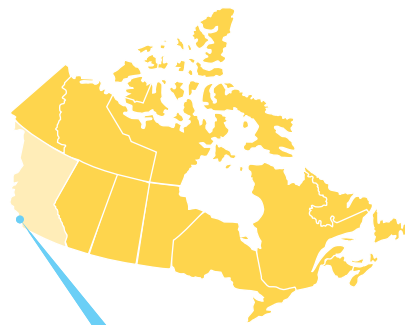
Available through Library and Archives Canada, free of charge

This book is a collection of essays exploring the opportunities and effectiveness of ADR alongside its challenges and limits. It contains contributions from Aboriginal and non-Aboriginal theorists and practitioners. This book is international in scope, with examples from Inuit and Arctic peoples, Dene, Gitksan and Wet'suwet'en, Tsuu T'ina, Cree, Metis, Navajo, Maori, Aboriginal Australians and Torres Strait Islanders.

4. Relationship Building Case Studies



Case Study



4.1 Sliammon First Nation and the City of Powell River (BC)

Location:

British Columbia's Upper Sunshine Coast, 125 km north of Vancouver

Population:

Sliammon First Nation: 1,000

City of Powell River: 14,000

Project costs:

\$ 2 million

Funding partners:

Government of British Columbia

Keys to success:

"There will be contentious issues and personality conflicts, which is why it is so important to have trust as the foundation." *Former Sliammon Chief L. Maynard Harry*

"Patience, understanding and respect." *Mayor Alsgard, City of Powell River*

"Relationship building needs to be done on a daily basis." *Stan Westby, CAO, City of Powell River*

Lessons learned:

"Look at the political chemistry and then determine how you can work together."

Mayor Alsgard, City of Powell River

"The biggest risk is the biggest reward." *Stan Westby, CAO, City of Powell River*

"The leadership has to be willing to put in the time. For example, the Mayor makes an effort to attend all meetings. The trust established between the two communities would erode if someone missed too many meetings,"

Former Sliammon Chief L. Maynard Harry

Contacts:

Mayor Stewart Alsgard or Stan Westby, Chief Administrative Officer,
City of Powell River

Tel: 604-485-8601 (City Clerk's office)

Email (via City Clerk): cgreiner@cdpr.bc.ca

Chief Williams

Sliammon First Nation

Tel. 604-483-9696, ext. 223(TBC)

clint.williams@sliammon.bc.ca

Background

The Mayor of Powell River and the Chief of Sliammon First Nation met for the first time in 2002. This first encounter took place when the Mayor was visiting the construction site of a new seawalk and was approached by the Chief. The Chief was upset with the construction work because it was disturbing historic areas and damaging cultural items such as petroglyphs. The Mayor and city had been unaware of Sliammon's cultural areas and as a result had not consulted them before the construction of the seawalk began. The Mayor then asked the Chief to coffee to discuss the issue.

The Government of British Columbia had provided financing of \$2 million to the City of Powell River to build the seawalk. Due to the sensitivity surrounding its construction, Mayor Alsgard decided to trust in the intentions of the Chief and instructed CAO Stan Westby to write a cheque for \$2 million to Sliammon First Nation to take over the construction of the seawalk. Having Sliammon First Nation manage the project would ensure that their heritage and culture were incorporated into the seawalk's design and construction, therefore ensuring that the historic area would be respected. Today, the seawalk signs welcome visitors with Sliammon landmark names in the Coast Salish language as well as in Canada's two official languages.

After this first encounter and the realization that the communities needed to begin to communicate more effectively, further meetings took place laying the foundation for their current relationship, which is one of mutual respect and trust.

Relationship building and the community accord

After their first meeting on the seawalk, the relationship between the two communities quickly grew to encompass larger issues of

joint concern. To formalize their relationship and highlight subjects of mutual concern, the communities drafted a Community Accord (i.e., communications protocol). The accord acknowledges the two communities in their distinct authorities and responsibilities toward their members and residents. It also recognizes that the interests of all persons living in the two communities are best served by working together in the spirit of cooperation.

"We continue to work together in the spirit of the accord," says Mayor Alsgard. "It is a model for community-to-community relationships and we are working from it [the community accord] as a basis for continued growth as partners."

On May 10, 2003, a historic ceremony marked this accord and brought together representatives from the federal government, the provincial government and the two communities. The ceremony took place in the traditional village of Sliammon. The objective of the ceremony was to mark the respect both communities have for each other.

Since the Community Accord ceremony, numerous events have taken place illustrating the strengthening relationship between Sliammon First Nation and the City of Powell River. In 2004, the communities developed an additional protocol agreement on culture, heritage and economic development. They also appointed intergovernmental coordinators and began regular intergovernmental meetings.

When the new council of Powell River was elected in 2006, part of its strategic plan was to strengthen relationships with various levels of government including Sliammon First Nation. The relationship between the Mayor and Chief is such that they can call on each other when needed. In addition, political officials and staff are in regular

communication with each and hold monthly discussions at an official meeting, usually over lunch.

There is a great deal of respect between the two communities. Sliammon First Nation gave the Mayor a traditional name. The greatest honour that can be bestowed upon any resident by Powell River has been given to two individuals, both of whom are members of Sliammon First Nation.

The two communities extend a helping hand to each other whenever possible. In one instance, the Mayor received a call from Sliammon regarding a problem it was experiencing with its water infrastructure. As part of a neighbourly gesture, staff of Powell River were sent to help Sliammon First Nation resolve the issue.

The strong and respectful relationship between the two communities has not gone unnoticed: the BC Treaty Commission wrote a booklet on the relationship between Powell River and Sliammon.

Service agreements and provision of services

Since November 9, 2009, Sliammon First Nation and the Regional District of Powell River have had a service agreement in place for fire protection and library services.

BC Transit provides bus services in the Powell River region. Until recently, the last stop between Powell River and Sliammon was three to four kilometres from the First Nation's village centre. As of April 2011, the last bus stop will be in Sliammon proper. This service will be of great use to Sliammon, ensuring that the youth and other Sliammon residents are able to arrive at home safely.

The City of Powell River is actively working to solidify additional service agreements with Sliammon First Nation. There are

discussions between the two communities on a variety of issues including waterfront projects, liquid waste, an Official Community Plan, and recreational facilities.

There is great potential in the future to have service agreements in place on water and wastewater given that both communities have reached a point at which they need to invest in water infrastructure. The City of Powell River needs to upgrade its water system and the lake from which Sliammon First Nation draws its water is reaching its limit for providing the community with raw water. The city is investing in a \$9-million upgrade to its water system, and it would be possible to extend the water line to accommodate Sliammon's water needs. AANDC's engineers, on behalf of Sliammon, came to inspect the situation in late 2010. Both Sliammon and the City of Powell River are interested in jointly addressing their water needs.

The communities face the same issue in terms of sewage treatment. Both communities need to upgrade their systems and recognize that working together will be a more efficient and effective way of resolving their wastewater needs.

While many discussions are taking place surrounding joint services, there are a few challenges causing the delay with the future joint water and wastewater projects. The main challenge is the delay in Sliammon's treaty process, which the communities hope will soon be resolved. Another challenge is finding funds to carry out the technical work needed to develop a consolidated project. Finally, communities are struggling to decide how to cost share potential service agreements.

Challenges

In an interview with CIPP, the CAO of Powell River noted he was pleased with the community-to-community (C2C) forums sponsored by the Union of BC Municipalities (UBCM) and First Nations Summit (FNS) that took place between the two communities, but recognized that more work needs to be done to ensure that the relationship between the City of Powell River and Sliammon First Nation continues.

The biggest challenge to the communities is finding the time and money to dedicate to joint projects and finding the management resources needed for these projects. The communities also note that political turnover is a challenge that can create difficulties in maintaining relationships.

Finally, the municipality does not always have the jurisdiction to do the right thing. For example when a significant amount of archaeological finds were discovered in a personal residence, the City of Powell River could not intervene or they would have faced liability issues.

Conclusion

The relationship between Sliammon First Nation and Powell River began over a contentious issue but the two communities have managed to turn their initial disagreements into an opportunity to develop a strong, mutually beneficial, trusting relationship. The communities credit their success to the high level of commitment from representatives of both communities. Meeting on a regular basis and regular attendance has been paramount to their achievements.

Over the years, the communities have demonstrated their solidarity and willingness to work together on issues facing their communities regardless of whether those issues are economic development, service delivery or treaty issues.

“It is a tough road to take but, despite it all, there are incredible rewards,” said Mayor Stewart Alsgard.

Case Study References

The City of Powell River. “A Sustainability Charter for the Powell River Region”, 2008, revised November 2010.

The City of Powell River. “City of Powell River Business Plan”, March 2010.

The BC Treaty Commission. “Developing Inter-governmental Relationships: the Sliammon–Powell River Experience”, September 2011.

City of Powell River. “Press Release: City of Powell River express support for Sliammon First Nation Treaty Process”, March 3, 2011.

Sliammon First Nation. “Press Release: Sliammon First Nation condemn Harper government for inaction on treaty”, March 3, 2011.

City of Powell River website: <http://www.powellriver.ca/siteengine/activepage.asp>

Sliammon Development Corporation website: <http://www.sliammondevcorp.com/SDC/home.html>

Sliammon First Nation website: <http://www.sliammonfirstnation.com/cms/>

Sliammon Treaty Society website: <http://sliammontreaty.com>

Case Study



4.2 Membertou First Nation and the Cape Breton Regional Municipality (NS)

Location:

Cape Breton Island, Nova Scotia

Population:

Membertou First Nation: 850 on reserve

Cape Breton Regional Municipality (CBRM): 100,000

Cost-sharing projects:

\$3.6 million for connector road

Additional partners:

Governments of Canada and Nova Scotia provided financing for connector road. CBRM provided in-kind services, mainly engineering services

Keys to success:

“Lots of goodwill and cooperation.”

Dan Christmas, Senior Advisor, Membertou

“Keep the channels of communication open. Even if there is dissent, the best approach is to continue the discussion.”

Doug Foster, Director of Planning and Development, CBRM

Lessons learned:

Avoid disagreements by consulting with your neighbouring community on issues that may have an impact on them before decisions are made.

Contacts:

Doug Foster, Director of Planning and Development,
Cape Breton Regional Municipality, NS
dbfoster@cbrm.ns.ca
Tel: 902-563-5088

Dan Christmas, Senior Advisor,
Membertou, Nova Scotia
danchristmas@membertou.ca
Tel: 902-564-6466

Background

On August 1, 1995, Cape Breton Regional Municipality (CBRM) was formed through an amalgamation of eight former municipalities, boards, and agencies within the County of Cape Breton.

First inhabited by the Mi'kmaq people, Cape Breton was one of the first areas of North America to be explored by Europeans. The Mi'kmaq people continue to be important members of Cape Breton society; three per cent of the total CBRM population speak Mi'kmaq.

Membertou First Nation is also an urban community and was named after Chief Membertou (1510–1611). It belongs to the greater tribal group of the Mi'kmaw Nation and is situated 3 kilometres from the heart of Sydney, Nova Scotia, in the tribal district of Unamaki (Cape Breton). Membertou was relocated in 1926 from its former location along the Sydney Harbour.

CBRM has sold properties to Membertou and owns land around Membertou. When amalgamation took place in 1995, residents of Membertou were enumerated for the first time. Membertou residents are considered citizens of CBRM and therefore can access all recreational programs and facilities.

Relationship building

The imprisonment in 1971 of Membertou resident Donald Marshall, Jr. had a major impact on the relationship between Membertou and the CBRM. Doug Foster, Director of Planning and Development at the CBRM, has worked for the municipality for 32 years and recalls being concerned that trust would never exist again between the two communities.

A number of factors led to the re-establishment of trust between Membertou and CBRM including political will on the part of the Mayor and Chief to re-establish a relationship; leadership from the Chief of Police; and the effort to establish relationships in each government administration, particularly the planning and engineering departments.

Over the past 20 years, there has been a tremendous improvement in the relationship. The communication started in a very formal manner. Today, interactions are now mainly informal, occur on a daily basis and are project-oriented. Differences in opinion arise, but the two communities work together to find solutions for daily operational issues on an informal basis.

Everyone from elected officials to staff is in regular communication with one another. There are no regular formal meetings except when service agreements are being renewed.

Service agreements

CBRM provides the following services to Membertou: sewage treatment, street-lighting, water, policing and fire protection. Membertou collects its own waste; however, it is disposed of at CBRM's landfill. Membertou pays for its own contractors to collect waste and purchased compost bins for all residents in 2011.

There is a municipal services agreement in place between CBRM and the Department of Aboriginal Affairs and Northern Development (AANDC) with Membertou as a third party. Many of the agreements have been in place since the 1960s. However, the number of services covered in the agreement has decreased over the years as Membertou has grown in population and prospered economically. Membertou has opted to be a third party in the agreement so that it can retain more control over rising service-delivery costs.

The last round of negotiations with AANDC and CBRM included discussions about water-related costs. Historically, AANDC paid for the entire cost of water; however, with the arrival of so many economic development projects, Membertou agreed to cover the costs for the commercial uses of water.

CBRM provides policing services. They are outlined in a separate contract with four parties: Membertou, CBRM, the Government of Canada and the Nova Scotia Department of Justice.

Joint projects

The two communities worked together to complete a new collector road that runs through Membertou and leads to the regional hospital. The project involved various levels of staff from both communities including engineers and planners. There was a lot of goodwill and cooperation between the Membertou Development Corporation and CBRM's Planning and Engineering offices to successfully complete the project in 2010.

The project estimate was \$9 million; however, the final project cost was \$3.6 million because of CBRM's contribution of in-kind services (mainly engineering services). Membertou contributed to the financing of the project and the major funders were the provincial and federal governments.

Another project is the construction of a Hilton hotel on lands adjacent to Membertou. Membertou purchased the 22-acre site from CBRM. There was the option to convert the land to Federal Reserve Land, but the land would have been tax exempt. Membertou opted to not convert the land, thereby ensuring a new source of tax revenue for CBRM.

Economic development

Before 2000, Membertou had a limited economic base. In the late 1990s, Chief Terrance Paul recruited new staff and together the team approached Membertou's deficit based on a new strategic direction focused on sustainability, innovation, conservation and success. This direction has resulted in a vibrant community that employs over 530 people and has attracted and fostered many businesses. Ninety-five per cent of the clients who frequent its businesses are non-Aboriginal.

In the past decade, Membertou has undergone rapid economic growth and success. The Government of Nova Scotia entered into a gaming agreement with Membertou that allows various forms of gaming and bingo. Gambling revenue has been the cornerstone of Membertou's financial success and provides the revenue for Membertou to invest in other businesses. One such investment was the Membertou Trade and Convention Centre, which opened in 2004. It hosts local and international events and conferences.

CBRM has been experiencing population decline and a waning downtown core, as is the case in other communities in the region. The main economic drivers in the Cape Breton region were steel and mining, both of which have disappeared, leaving behind high unemployment rates across the region. While CBRM's population is in decline, the population of Membertou is increasing.

Although Membertou and CBRM are experiencing different economic issues, their fates are tied. Membertou First Nation is building on its economic hub and needs a labour pool to support this development. CBRM's population is in decline but it has the infrastructure in place to provide services to both communities.

Challenges

The specific roles of the Government of Nova Scotia and AANDC are not always clear, which can pose certain challenges around accountability. Similar to other communities, Membertou First Nation and the CBRM have found that there are also challenges around consistency given the turnover in staff and political representatives. This makes it difficult to try to establish and maintain relationships.

CBRM and Membertou have found that the best way to get things done is to keep communication open and develop a collaborative solution.

There is the potential to further develop the relationship between the two communities and a nearby First Nation, Eskasoni. Eskasoni has the largest community of Mi'kmaq speakers in the world and has a population four times the size of Membertou. In the past, a resident of Eskasoni was elected to CBRM council.

Half the labour force of Membertou comes from outside the reserve. In the future, Membertou would like to work with Eskasoni to draw from its labour force, which has a high unemployment rate.

Conclusion

Membertou and CBRM have faced enormous challenges over the years. The leadership demonstrated by staff and elected officials from both communities was the catalyst in repairing damage caused by the Donald Marshall, Jr. case. As the communities face their own unique economic and demographic challenges, their collaboration and support for each other will help ensure each other's viability.

Given the multiple relationships that exist between staff and elected officials in the two communities, CBRM and Membertou have found that their model of daily communication on a project-by-project basis works to maintain open communication and foster trust.

Case Study References

CBRM website: <http://www.cbrm.ns.ca/>

Membertou Nation website:
<http://www.membertou.ca/main-page.asp>



Unit 3

Guide to Service Agreements



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1. Establishing the foundation for a service agreement

This section outlines some of the groundwork that is required when deciding if a service agreement is a feasible option financially and operationally for your community.

1.1 Feasibility studies

After communities have established positive working relationships, a feasibility study is the first step in determining if a service agreement is an appropriate method for service provision. A feasibility study will help determine if the areas of cooperation identified by the First Nation and the municipality during their preliminary conversations make sense economically and operationally. The level of sophistication of the feasibility study will vary from region to region depending on population, capacity and type of service provided. In some communities, staff members from the municipality and the First Nation can complete feasibility studies, whereas other communities may need to hire external experts.

What does a feasibility study seek to accomplish?

A feasibility study examines several issues, which can help identify if a service agreement is an appropriate option. The following actions should be considered in a feasibility study:

- Outline how services are currently being provided in each community.
- Identify strengths and weaknesses of the status quo in a quantifiable manner.
- Assess current costs for both parties to perform the services individually.

- Examine how the level and quality of service could improve or costs could be reduced over 5–10 years if communities shared resources and equipment or communities invested jointly in more expensive and sophisticated infrastructure, facilities, or equipment.
- Analyze the long-term life cycle of the service agreement.
- Identify the cost of a service agreement compared with that of the status quo.
- Compare the situation to other cases where First Nations and municipalities have cooperated for similar services.

What are the benefits and outcomes of a feasibility study?

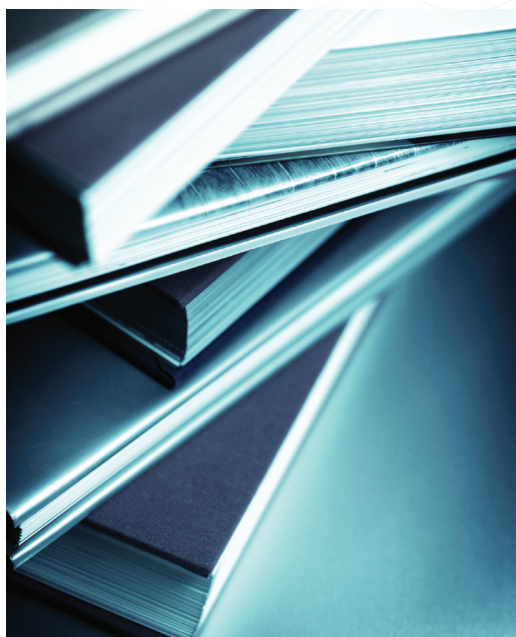
By providing this information in a feasibility study, both parties and the potential funders of the projects will be able to determine the following:

- The extent to which financial savings and economies of scale can be achieved by the service agreement
- The possible service level improvements for the municipality or the First Nation
- The infrastructure, equipment and financial resources that will be required from both parties

- Which legal considerations will need to be taken into account during the negotiation of the service agreements (e.g., infrastructure ownership)
- Ways in which infrastructure and services could be organized
- Any risks or potential negative impacts to either party
- The benefits

Who pays for the feasibility study?

Both communities should share the costs of an expert to perform the feasibility study, or they should divide the cost proportionate to perceived benefit of the service agreement or proportionate to population. Municipalities and First Nations have unique options to receive funding and grants to undertake a feasibility study, and both parties should explore those options thoroughly before proceeding with their study. Several organizations offer grants and cost-sharing opportunities for feasibility studies. For more information about funding opportunities, please see **Unit 4, Chapter 1: Considerations for your service agreement.**



1.2 Environmental assessment

An environmental assessment (EA) is an important part of the planning stages for a potential infrastructure project. This section outlines the purpose of an environmental assessment and the relevant legislation and describes how environmental assessments fit into project delivery when working with AANDC.

Purpose

An environmental assessment is a legislated planning and evaluation process that is completed prior to a development project. Environmental assessments consider the potential environmental and socio-economic impacts of a project before it begins to ensure that any potential negative impacts of the project can be adequately mitigated. If the project goes ahead, information gathered through the environmental assessment process can be used to guide changes to the project's design that may help minimize impacts on the environment and people.

Legislation

An environmental assessment is triggered according to the *Canadian Environmental Assessment Act* (CEAA) or, for projects located in Yukon, under the *Yukon Environmental and Socio-economic Assessment Act* (YESAA). Generally speaking, an environmental assessment is necessary whenever a physical infrastructure project is proposed (e.g., a new water treatment system) with the exception of projects listed on the Exclusion List Regulations of CEAA. For more detailed information on environmental assessment requirements, please see the respective Acts.

**Environmental assessments: how AANDC fits in**

Proposed projects funded by the Department of Aboriginal Affairs and Northern Development (AANDC) may trigger an environmental assessment under CEAA. When the environmental assessment is triggered, AANDC will initiate the EA review process according to its obligations under CEAA and will engage other departments as necessary (e.g., Environment Canada, Health Canada and stakeholders).

It is important to note that the environmental assessment is required only once for an entire project. However, AANDC requires reporting through a review process that must be completed at each stage (i.e., feasibility, pre-design and design) of any project it funds.

When making its recommendations for funding decisions, AANDC will consider both the results of the environmental assessment and the additional comments provided by the other partners when making its recommendations and funding decision.

The environmental assessment fits into AANDC's larger role of coordinating project review, which includes reviewing project proposals against appropriate engineering standards, guidelines and policies, approving funding, providing technical advice, and ensuring that the environmental assessment process is conducted where required. AANDC will determine the timing of the environmental assessment on a case-by-case basis as it fits into these review processes.





2. Service agreements: Discussing the terms of the agreement

After a service agreement has been deemed a feasible option for service provision, parties must decide on the practical aspects of the service agreement. This means deciding on the terms of the agreement: who will be providing what services, how these services will be managed, how much these services will cost and what principles will govern the relationship between the First Nation and the municipality. By ensuring each service agreement has sufficient information from the beginning, future generations of leaders for both parties will be able to understand the spirit of the agreement in full. This full understanding will minimize future disputes and ensure limited gaps in terms of legal clauses, schedules, service standards and pricing.

In general, there are a number of best practices to keep in mind:

1. Service agreements should recognize as many services as possible.

When negotiating service agreements it is important to consider the various ways communities can cooperate on providing services to their residents. All parties should keep in mind services such as recreation facilities, libraries, snow removal and other services which are or can be provided.

2. Service agreements should be built from knowledge gained from past experience and the experiences of others.

Service agreements are not a new phenomenon which means there is a vast body of knowledge through experience that exists across the country. For more information on lessons learned from service agreements and partnerships across the country, please see the case studies which appear throughout **Units 2, 3 and 4 of the CIPP Toolkit**.

The next section offers recommendations in general terms on service agreement provisions and additional legal considerations to assist in the development of successful service agreements. These recommendations are a guide to help generate discussion, speed up the negotiation process and reduce the legal fees that are associated with contractual agreements. The information provided compliments **Unit 3, Chapter 7: Tools: Service agreements templates**.

2.1 Negotiation principles

An awareness and understanding of the ideal legal clauses of a service agreement is extremely important for creating an agreement without any gaps. However, negotiating each clause can be time-consuming and sometimes challenging. Municipalities and First Nations can minimize these challenges and produce mutually agreeable service agreements by establishing ground rules or principles for their negotiation. This section provides suggested principles, which communities can use to work more effectively together.



The following principles represent lessons learned and best practices as recommended by experts in the field and referenced in the Institute on Governance document, *Towards Sound Government to Government Relationships with First Nations: A Proposed Analytical Tool*.

■ Fairness

Fairness means treating all parties in an equitable manner. The Institute on Governance emphasizes that equitable does not mean equal at all times. It means treating parties in a fair manner that both parties can agree to. For example, during a consensus-based decision-making process, a municipality may have four individuals on its side of the negotiating table while a First Nation may have six. Although this situation is not equal, it is equitable as decisions cannot be made unless everyone agrees. It could be that the municipality only has four people who could attend the negotiation meeting. Fairness also means respecting that negotiating service agreements takes place in a government-to-government context, which in turn means respecting the jurisdiction of each party and their respective legal rights.

■ Legitimacy and voice

Maintaining legitimacy and voice in service agreement negotiation is closely linked to fairness. Legitimacy can pertain to several aspects:

- The quality of the interaction between the First Nation and the municipality
- The extent to which the relationship and the agreement have involved the communities and given these communities a voice in the discussions
- The extent to which differing approaches to governance and negotiation is respected by both parties

■ Accountability

Accountability means ensuring that negotiations are carried out in a manner that is responsive to community needs and expectations, funders and partners. Being accountable means being transparent to your community, following through on promises and sharing information with everyone involved in the negotiations. This includes preventing delays in the negotiation process and gaining trust.

■ Preparation

When entering into negotiation with your neighbour, make sure you arrive at the discussions prepared so that discussions stay on track and organized. Some questions to consider include the following:

- On what services am I willing to cooperate?
- What are my main concerns?
- What will my partner's main concerns be?
- How am I prepared to address my partner's concerns?
- What are my community's main restrictions?
- What am I looking for in this partnership in terms of communication?
- Is there a timeline in which I would like to try to achieve our objectives?
- What does success look like to me?

■ Expert advice

Although it is possible to reach agreement without using experts, sometimes hiring an expert can help get discussions back on track if negotiations become difficult.

Professional facilitators and negotiators can help both parties communicate their desires and needs more effectively to each other and help communities discuss the more difficult or complicated issues that may arise. Lawyers may be used to help communities understand the full legal implications of their agreement. They are important to consult toward the end of negotiations to ensure that the service agreement is complete.

2.2 Service agreement provisions

An important part of having a robust service agreement is ensuring that the contents of the actual service agreement are complete and detailed. A number of elements should be included in a service agreement, but this is by no means an exhaustive list of the provisions that should appear in an agreement. These checklists are meant as a guide for both parties that will need to work together and discuss the various roles, responsibilities and structures before entering into an agreement.

The provisions of a service agreement can be subdivided into four main categories:

- Essential contract elements
- Description of services
- Customary provisions
- Additional recommended provisions

Use this section with the Service Agreement templates found in **Unit 3, Chapter 7: Tools: Service agreement templates.**





2.2.1 Checklist 1: Essential contract elements of a service agreement

☒ Effective date

The effective date of a service agreement establishes when the agreement will become legally binding on the parties. This date can be the date of adoption by both parties or a date determined by the parties. It should always, therefore, be after the necessary band council resolutions, bylaws and authorizations have been approved.

☒ Parties to the agreement

The names of the parties in the agreement must be clearly stated at the beginning of the service agreement. Each party's title will be followed by its authority to enter into the agreement (as described in the next subsection).

☒ Authority to enter into agreement

The parties involved in the agreement may provide evidence of their authority to enter into the agreement itself (i.e., an approval from band council or municipal council). This section is usually included in the preamble section (see below) as the first two clauses.

In the case of a First Nation, which is governed by a Chief and an elected council, paragraph 2(3) (b) of the *Indian Act*, R.S.C. 1985, I-5, provides that a band council must exercise its authority at a band council meeting where the majority of band councillors are present. The authority of a First Nation to enter into an agreement will come about if the band council approves the agreement at a band council meeting where the majority of the councillors are present. An example of evidence would be a band council resolution signed by the band council members. Ideally, a copy of the band council resolution would be attached as a schedule to the agreement.

Similarly, a municipality would gain authority to enter into an agreement from a municipal bylaw or a resolution. Ideally the service agreement would include a reference to this bylaw or a copy of the bylaw would be attached as a schedule to the agreement. For more information about what schedules to attach to your service agreement, please see **Unit 3, Chapter 8: Service agreement and pricing references**.

☒ Preamble

A preamble sets out the background information about the agreement and describes the purpose of the agreement in broad and general terms. It immediately follows the parties of the agreement. It is generally a short section that follows "WHEREAS".

☒ Definition of terms

The Definition of Terms section of an agreement will provide any legal definitions, short forms used within the document and definitions of any common terms including terms related to service provision. The definitions in this section are important for consistency in the agreement and to ensure that the parties are able to reference these definitions at a later date, leaving little ambiguity in the interpretation of the agreement.

☒ Term of agreement

In some cases parties will request to have the agreement for a finite period of time. There are benefits and downfalls of fixed term agreements. For example, if one party intends to invest a lot of time and money into the arrangement, that party may desire a longer-term arrangement so that costs can be recovered (e.g., 10 years is considered a reasonably long term for an agreement). However, the other party may desire a shorter term if it wishes to renegotiate the terms of the arrangement regularly. Some communities compromise by setting a 5- to 10-year term, but stipulate that costs will be re-evaluated each year.

Parties may want the ability to be able to terminate the service agreement with reasonable notice from either party before the specified termination date. What constitutes reasonable notice will depend on the circumstances and will need to be defined by the municipality and the First Nation. For example, complex agreements such as water and wastewater will generally require much earlier notice than those for solid waste.

☒ Renewal of agreement

If the parties have agreed to create a fixed term service agreement, it is possible that the agreement will expire before a new service agreement can be negotiated. The parties may wish to include an automatic renewal provision to avoid the possibility of having no agreement in the interim. Alternatively, if the parties wish to renegotiate with each renewal, it is possible to stipulate a time frame for renegotiation. For example, the parties will begin to renegotiate the agreement eighteen (18) months before the end of the term.

☒ Applicable law

Section 88 of the *Indian Act* provides that all laws of general application in each province apply to First Nations in the province, except in the case that those laws are inconsistent with the *Indian Act* or any other rule, order, regulation or bylaw made under the *Indian Act*.

The First Nation may wish to include this provision, which emphasizes that this principle be upheld in the service agreement. However, this would simply be a reiteration of existing law and is by no means necessary. It may be desirable to restate this provision if only for a means of introducing a mediation provision in the case of a conflict over whether a provincial law is in conflict with the *Indian Act*.

☒ Constitutional and legislative changes

Many service agreements will be in effect for a long period of time and in some cases, legislative changes may take place that will affect the rights and obligations of the parties in the agreement. Parties may wish to consider including a mechanism in their agreement for resolving any difficulties caused by future legislative changes (e.g., environmental regulations, water or wastewater regulations) as legislative changes may require capital upgrades, cost increases or changes to service delivery.



☒ **Consent by interested party**

When one party hires a developer to develop an area, the other party will want to ensure that the developer is aware of the provisions of the service agreement. Therefore, include in the agreement a clause stating that the party contracting the services will be obligated to provide the corporation with notice and a copy of the agreement. This clause should also state that although the developer consents to the terms of the agreement, it does not replace a separate agreement between all three parties (i.e., band, municipality and developer) outlining construction responsibilities. The other partner may also want to ensure that it is indemnified from liability of losses or damages as a result of the corporation's actions.

2.2.2 Checklist 2: Description of services in a service agreement

☒ **Description of services**

The Description of Services section explains what one party is willing and able to supply to the other and that the party receiving the services is willing to purchase the aforementioned services from the service provider. Services may include one or more hard services (e.g., water and wastewater) and a range of other services such as solid waste, fire protection, animal control and parks and recreation. In this section, ensure you are as clear as possible about which services are included and what those services entail. This may include schedules with maps of serviced properties, lists of facilities and service schedules (e.g., schedules for solid waste pick-up or transit timetables).

☒ **Level of services**

A description of the level of services should state the standard of the level of services. For example, commonly this provision will mention that the recipient of services shall receive services equal to those of residents of the service provider's community.

☒ **Charges for services**

This section should outline the costs for providing services. Often, payment is a lump sum with several caveats due to variables such as increases in municipal taxes or expenses, and the addition of new residences to the agreement. In the case of water or wastewater, it is possible to charge by metered use similar to residents of the service provider. The overall objective of this section is to set pricing formulas that ensure equitable prices between service providers and service receivers. Both capital and operation costs must be considered in the pricing formulation. Charges for services may include previously incurred, but ongoing, capital costs for a project. Parties will need to have a discussion about how capital costs and operations and maintenance will be covered. Rationales for pricing or demonstrations of pricing calculations should be shown in the agreement or in a schedule to the agreement to ensure corporate memory over the term of the agreement due to staff and elected official turnover. See more information about pricing, charges, and considerations in **Unit 3, Chapter 3: Guidelines for pricing options in a service agreement.**

☒ **User fees**

User fees indicate if there are any other additional charges for services. For example, a service fee for a building inspection or a recycling services fee may be paid in addition to charges for services. It is possible to incorporate charges for services and user fees under the same heading in the service agreement.

☒ **Bill payment**

The bill payment section outlines the procedures for bill payment including how the payment will be transferred, deadlines for bill payment and late fees, if necessary.

☒ **Payment penalties and termination for breach of agreement**

A service provider will want to establish some recourse against a service recipient who does not pay for services, which would put the recipient in breach of the terms of the service agreement. Penalties would traditionally be used in the case of non-payment. Oftentimes, such penalties will not be an effective mechanism considering the jurisdictional issues associated with service agreements between First Nations and municipalities. For example, many actions that the municipality may use against its own residents for non-payment are not suitable for a First Nation as the reserve lands are held by the Government of Canada. Generally, provisions will be made for the suspension of services while the amount owing accrues interest or, in extreme cases, termination of the service agreement. In the case of services that cannot easily be discontinued (e.g., water and wastewater), preventative measures — such as a letter of credit provided to the service provider in case of failure to pay for the service(s) — are also a practical way to deal with breach of agreement issues that may arise. The CIPP service agreement templates include a clause that stipulates a letter of credit is to be issued to the service provider.

Similarly, the service recipient may want the service agreement to provide remedies that it can use if the service provider breaches its obligations under the agreement. This may include suspension of payment or, in extreme cases, termination of the agreement.

☒ **Construction of infrastructure**

If new infrastructure is needed to provide the agreed-upon services to the First Nation, the parties must establish who will be responsible for constructing the new infrastructure. The clause may also define the infrastructure standards that must be met. For example, it helps to state the minimum requirements in the service provider's health and safety standards.

☒ **Ownership of infrastructure**

The ownership of infrastructure provision specifies which party owns any new infrastructure required to implement the service agreement. Usually each party will fund capital within their jurisdiction or boundaries and will retain ownership of such infrastructure.



☒ **Repair**

The Repair provision describes the processes for repairing, upgrading or integrating the services that will be provided to the service receiver. Often, the procedure and costs of repairs resulting from negligence or wilful acts are made distinct from routine maintenance repairs.

☒ **Access and rights-of-way**

This provision ensures that staff and contractors will be allowed access to all areas of the service receiver's land, which is necessary to provide services and any required maintenance. This provision may also include inspections for service agreement compliance — particularly those surrounding fire protection agreements.

☒ **Liability**

The Liability clause ensures that there will be no liability on the part of the service provider for failure to make a service available at a certain level, although the service provider will make its best efforts to ensure services are in their best working order. This may also include no liability in the case of a service receiver not adopting and/or abiding by bylaws or resolutions relating to service provision.

2.2.3 Checklist 3: Customary provisions for a service agreement

Customary provisions are those that are routinely used in contractual agreements and will be applicable to all service agreements no matter how simple or complex. They provide a framework for all the provisions, rights and obligations previously discussed.

☒ **Notice**

A Notice clause ensures that parties will always be able to contact each other. It includes up-to-date contact information and provisions indicating appropriate forms of communication (letter, fax, etc.), the procedure for change of address and the date that notices from one party to the other shall be deemed effective (e.g., emails are effective the date they are sent).

☒ **Entire agreement**

It is important that the parties outline all their rights and obligations in one single document. If the agreement involves several separate documents, the other documents must be attached as scheduled documents to the main agreement. A short clause should be used to state which documents are considered part of the agreement. This clause should also state that the agreement will be interpreted using all of these documents, which will be considered the entire agreement.

✓ **Headings**

Headings make an agreement easier to read but sometimes a heading does not always accurately reflect the subject matter that follows it. A clause should be added to ensure headings do not guide the interpretation of each provision, but are used to make the agreement more reader-friendly.

✓ **Amendment**

An amendment clause outlines the manner in which future changes can be made to the agreement. Ideally, the amendment clause will stipulate that all amendments are to be made in writing and attached to the agreement, increasing the certainty of the agreement by future staff members.

✓ **Assignment**

Assignment means the extent to which other parties, particularly in the case of amalgamation, will adopt the agreement. Generally, courts assume that a contractual right is assignable unless it has been otherwise stated in the agreement. Usually parties will not want automatic assignment without first obtaining the new parties' agreement to assume the obligations and liabilities of the agreement. Whether or not amalgamation of either First Nations or municipalities constitutes an assignment is unclear in the law. It is therefore ideal that parties define in the agreement whether an amalgamation constitutes an assignment or not.

✓ **Enurement**

An enurement provision ensures that the agreement binds the current parties and their successors or substituted party (e.g., the next elected Mayor or Chief and council) to the rights and obligations included in the service agreement.

✓ **Severance**

In the case that a court deems a provision in the service agreement invalid, the entire agreement could fall apart without a provision that allows the parties to remove the invalid provision while leaving the rest of the agreement intact.

✓ **Waiver of breach**

To avoid having the agreement interpreted as allowing a party's conduct, silence or inaction constitute a waiver of their rights in the agreement, the parties should include a provision that ensures rights cannot be waived, except by written agreement.

2.2.4 Checklist 4: Additional recommended provisions

The following provisions are not necessary to have a workable service agreement, but they offer the opportunity to ease relationship challenges and support further collaboration.

☒ Conflict and dispute resolution

Ideally, agreements will include a provision related to the resolution of disputes and conflicts between the parties. The parties should select the method of resolution (arbitration, mediation, etc.) for the circumstances of the agreement (please see **Unit 2, Chapter 3: Collaborative dispute resolution**). The terms of the resolution mechanism should also be defined in this provision. For example, if binding arbitration was selected, define how the costs will be borne by the parties and specify the time frame for the decision.

☒ Further assurances and compatible bylaws

Laws of general application apply on reserves but sometimes, to ensure the health and safety while the agreement is in place, additional compliance will be necessary. Service receivers may choose to include a clause indicating which bylaws they intend to comply with (e.g., fire protection or animal control bylaws) or it may create additional comparable bylaws. Usually there is also a clause included indemnifying the service provider from any legal action in the case of non-compliance to adopted or new bylaws that lead to damage. For more information, please see **Unit 3, Chapter 2.4: Bylaw compatibility**.

☒ Consultation

This provision ensures that both parties intend to consult with one another about land management issues, regional economic development and environmental sustainability, for example. This provision will allow communities to continue working together in areas beyond services.

☒ Regional integration

A regional integration provision ensures that both parties will act according to regional standards and participate in regional initiatives such as sustainability forums and joint watershed management programs. For more information about how your community can develop joint source-water protection boards or initiate a joint sustainability-planning process, please see **Unit 4, Chapter 1: Considerations for optimal service agreements**.

2.3 Schedules to include in a service agreement

In addition to providing sufficient information in the clauses of a service agreement, additional information that is relevant to the service agreement and provides further information about the partnership should be attached as schedules. Schedules ensure that relevant information is well organized and remains in one place over time. Schedules may also be referenced in a service agreement to act as appendices with additional information and clarification.

■ Band council resolutions and bylaws

Parties of the agreement should provide evidence that the band council and the municipal council have agreed that the service agreement is to their mutual benefit and that they intend to honour it. (See explanation in **Unit 3, Chapter 2.2: Service agreement provisions**, under the provision, **Authority to enter into agreement**.) It is also useful to include any band council resolutions or bylaws that demonstrate the establishment of compatible bylaws and regulations, particularly those pertaining to fire codes for fire protection service agreements.

■ Maps

Maps can help clarify reserve and municipal boundaries. In the case of a water and sewer service agreement, maps can demonstrate points of connection, water and sewer mains and water meters, for example. Maps are required for fire protection and solid waste agreements as they indicate the properties that will require service by the service provider. These maps will need to be updated regularly as buildings are added to the community or as boundaries change.

■ Pricing calculations

A schedule or a series of schedules could be added to a service agreement to demonstrate how pricing for the relevant service was established. This could include calculations, municipal or First Nation infrastructure inventories and population and dwelling counts for both communities. This schedule or series of schedules will ensure transparency in the service agreement and prevent conflict in the future. For more information about pricing models, please see **Unit 3, Chapter 3: Guidelines for pricing options in a service agreement**.

■ Communications protocol

If communities have previously agreed upon a communications protocol, the protocol could be referenced in the service agreement. This protocol should also be added as a schedule to the service agreement to underline the importance of ongoing communication between the parties and the commitment to joint problem solve.

2.4 Bylaw compatibility

Definition of bylaw compatibility

When entering into a service agreement, the bylaws of the municipality and the First Nation will work together to achieve their mutual goals and priorities as set out in the service agreement. Bylaw compatibility does not mean that all the bylaws must be the same, but rather that both parties have considered how well their laws fit together.

In a well-prepared service agreement, bylaws relating to services will be referenced. In addition, parties will have stated a mutually agreeable solution to resolve any differences in the bylaws and regulations that may affect service delivery.



Compatible bylaws in service agreements

The amount of effort to ensure compatible bylaws will vary according to circumstance. Each party will need to identify pertinent existing bylaws and determine any similarities and differences.

Areas where bylaw compatibility should be examined include but are not limited to the following:

- Public services: connection to water and wastewater design specifications
- Building and safety standards: fire safety permits and inspections
- Animal control: animal control bylaws and animal licensing requirements

When negotiating service agreements, parties will come to a mutually beneficial solution by working collaboratively. Oftentimes, the bylaws of the service provider are adopted or mirrored in the service receiver's community. This occurs when the service provider has been operating services under these regulations before negotiations and often has well-established systems for enforcing these codes. For example, in water services agreements, it is often easier for the service receiver to adopt similar design specifications for infrastructure as the service provider in the case of no pre-existing infrastructure. In CIPP's service agreement templates, bylaw compatibility is achieved by the service receiver agreeing contractually to adopt or follow the service provider's bylaws. It is further stipulated that the service receiver will not be liable from any loss or damages in the case of non-compliance.

Bylaw enforcement: jurisdictional challenges

Service agreements are agreements between two distinct governments and jurisdictions. With this in mind, a number of challenges relating to the realities of trying to enforce bylaw compliance must be overcome. Please

note that if your community is concerned about bylaw compatibility or the enforcement of bylaws, you should consult a lawyer. The following section is only meant to highlight challenges and options, and is not intended to be legal advice.

Service agreements generally have two ways of including bylaws and bylaw enforcement:

- Option 1:** including a provision in the service agreement that the service receiver agrees to comply with the service provider's bylaws (and enforce compliance of the same by the individuals receiving the services); or
- Option 2:** the First Nation would adopt its own bylaws with equivalent provisions to the municipal bylaws and enforce those bylaws.

What results from non-compliance with a bylaw?

Under Option 1, if a service receiver failed to comply with or enforce compliance with bylaws, the service provider could charge for breach of contract. However, the service provider would still not have the regulatory jurisdiction to directly enforce its bylaws.

Communities receiving services could also contractually attorn to the service provider's jurisdiction, which means that the service provider could enforce bylaws against the service receiver.

To address this issue a release of liability (indemnity) in favour of the service provider for any loss resulting from non-compliance would be addressed in the service agreement. If desired, communities could also negotiate to include a provision that the service provider could seek injunctive relief that would require compliance with the local bylaws.¹

¹ Injunctive relief is a court order that requires a party to do or refrain from doing certain acts. Failure to comply with an injunction could result in criminal or civil penalties or the requirement to pay damages or accept other court ordered sanctions.

With option 2, the adoption by a First Nation of bylaws that are equivalent to those of its partner municipality can be a time-consuming process as ministerial approval is required for First Nations to adopt new bylaws under the *Indian Act*. It is also not clear whether a contractual obligation (a provision in the service agreement) on the part of the First Nation to enforce its own bylaws would be enforceable in court. Since the First Nation enacted the bylaw within its discretionary power, there is no obligation to enforce it unless the bylaw itself creates a statutory duty to enforce its provisions.

In this situation a First Nation's failure to enforce the bylaws may only be considered a breach of contract resulting in the municipality receiving monetary damages for any loss suffered. It is important that agreements with a provision for the service receiver to adopt bylaws include a clause about the responsibility to enforce the bylaws. They should also waive liability from the service provider in the case of non-compliance. If desired, service agreements could also include a provision for the payment of monetary penalties in the event that bylaws are not enforced.

Communities that believe that a breach in bylaw enforcement would harm health and safety could stipulate that this would cause the services to be suspended until the necessary bylaws were enforced.

Of course, the best way to avoid dealing with these jurisdictional challenges is to have open and frank discussions about the reasons the bylaw requirements are needed to deliver services. It also helps to maintain communication throughout the agreement so that problems can be resolved without legal action or suspension of services. For more information on relationship building, please see

Unit 2: Guide to Relationship Building.

Additional methods of developing and maintaining compatible bylaws

In addition to solving preliminary bylaw compatibility issues, communities may want to stipulate ongoing communication relating to bylaw changes and new bylaw development to prevent conflict and keep communities engaged in each other's issues. For this reason, service agreements often establish some sort of bylaw cooperation or notification process between the parties, (e.g., a joint bylaw committee, a planning district commission, or a notification process). For more about bylaws and notification, please see the service agreement templates provided in **Unit 3, Chapter 7: Tools: Service agreement templates.**

Different options and methods are available for developing compatible bylaws between First Nations and municipalities including a joint bylaw committee, a planning district commission, and a notification process.

Joint bylaw committee

A joint bylaw committee is a group of representatives from the band council, the municipal council and an independent, mutually selected individual.

Duties would include the following:

- Recommend areas where compatible bylaws are needed
- Review existing bylaws
- Develop ideas on the content of compatible bylaws
- Review proposed bylaws and identify conflicts

In the case where neither party wishes to change any existing or proposed bylaws, the matter could be dealt with through a dispute resolution process.



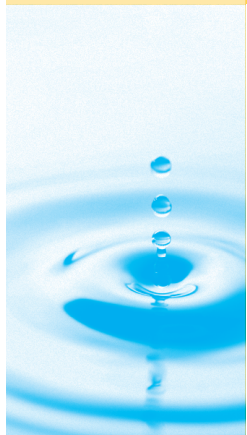
Planning district commission

Duties of the planning district commission would be similar to the joint bylaw committee. A board or planning district commission can be established bringing members from the municipality and First Nation together to outline common social and economic interests and values and common community planning concerns. The parties can adopt the approach of district planning commissions by formalizing an agreement — either in the service agreement or separately — to establish a planning commission. This commission may address issues such as land use and development, environmental concerns, infrastructure planning, or economic development. If the planning commission is enacted outside the service agreement, both communities will need to enact bylaws to accept the plan.

Notification process

The notification process is much less involved than the two previous options. This process may be a better fit for rural or small communities where it is difficult to meet regularly or find the extra staff required to run such processes. Generally, a notification process entails sending a copy of a proposed bylaw to the other party to receive comments before the bylaw is adopted. If the other party identifies conflicts in the proposed bylaw, both parties could have a discussion about a possible resolution. If a resolution cannot be reached, the parties could enter into a dispute-resolution process.





3. Guidelines for pricing options in a service agreement

When it comes to pricing for shared services, several models can be considered for your community depending on its population, situation (rural versus urban), geography and local politics, as well as on the type of service required and capital costs for the project. It is important to be transparent and accountable and have clear communication when negotiating pricing for services, as these factors can help avoid disputes in the future and ensure clarity for compliance.

3.1 Principles for establishing cost sharing and pricing

In its 2010 report, “Cost Sharing Works: An Examination of Cooperative Inter-Municipal Financing,” the Alberta Association of Municipal District and Counties (AAMDC) identified best practices in cost sharing for services between governments. (For the complete reference, please see **Chapter 8: Service agreement and pricing references**). This report highlights the following four key principles for pricing services:

- **Cost equity** (includes fairness): Both parties should agree on a fair and equitable price for services and comply with the agreed-upon payment protocol.
- **Accountability and transparency:** Both parties and their residents should have access to the information about the costs for services.
- **Cost effectiveness:** Both parties should agree that there is value for the actual cost of the service and the quality of service being provided.
- **Cost efficiency:** The service agreement must make sense for both parties economically with resources being maximized and benefiting both parties.

With these principles in mind, parties can begin to examine the actual costs associated with the services and the various pricing models that may be used.

3.2 Pricing considerations

Water and Wastewater

The type of pricing model largely depends on the type of service that is being provided. For example, when water services are being provided consideration needs to be given to the following costs:

- Operations and maintenance (O&M)
- Upfront capital (e.g., meters, mains, water plant, pumphouses)
- Long-term capital costs (e.g., new technology, pipes, service buildings)
- Operator compensation (e.g., salaries, benefits)
- Training
- Overhead costs (e.g., human resources, finance, administration costs)
- Raw water
- Water treatment (e.g., chemicals and additives)



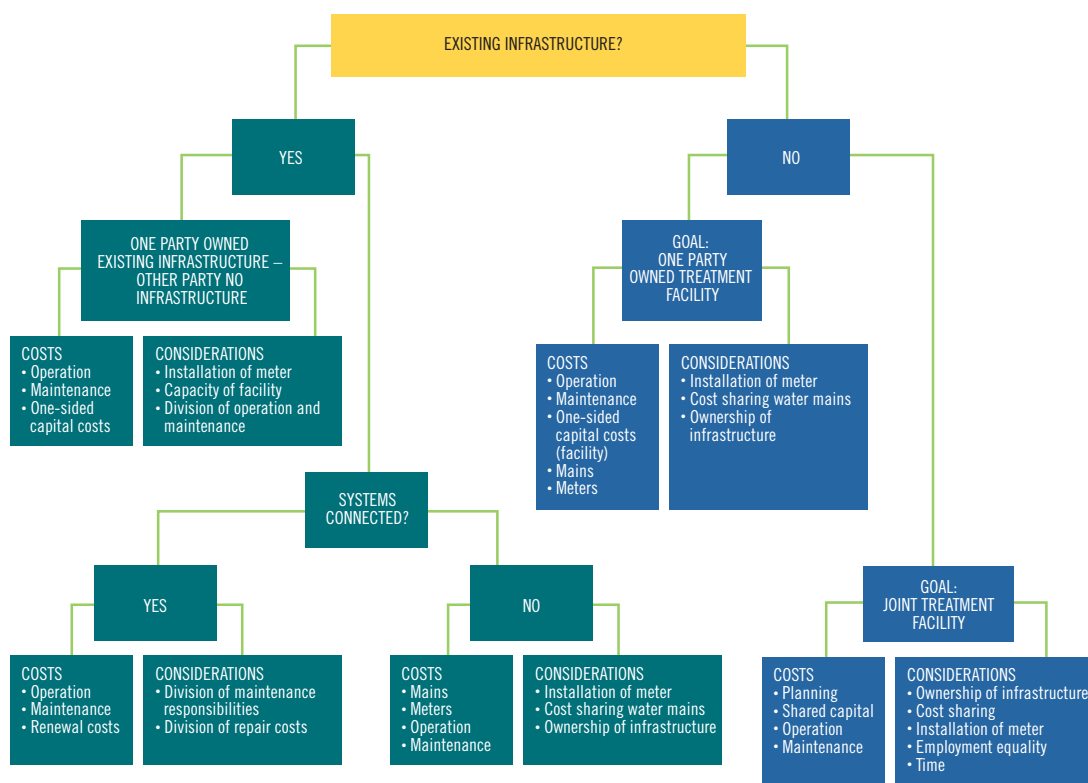
- Regulatory changes (e.g., legislated modifications to existing infrastructure standards and business practices)
- Consumption rates, residential versus business
- Planning costs
- Source water protection
- Local tax subsidization of services

The Government of Nova Scotia has developed a tool that helps municipalities manage their integrated municipal infrastructure assets and set priorities for capital infrastructure investments. This asset-management tool can provide municipalities and First Nations with a clearer picture of the costs associated with infrastruc-

ture investments. Life-cycle planning tools are available for water, wastewater, water mains, reservoirs, solid waste, transfer stations, roads, and integrated roads, sewer and water. These tools are available at www.nsinfrastructure.ca/pages/Asset-Management1.aspx.

It is also important to consider how existing infrastructure or the lack thereof will affect the costs and considerations for a service agreement. **Figure 1: Identifying needs and considerations for pricing water services** demonstrates the differences in costs depending on existing infrastructure using water provision as an example:

Figure 1: Identifying needs and considerations for pricing water services



Source: Community Infrastructure Partnership Program (CIPP), January 2011

Fire Protection

Fire protection fees are typically a lump sum determined on a per household or building basis in addition to any overtime charges that may be incurred due to large fire situations requiring extra staff or the use of staff from another community. Some considerations for costs that should be included in the lump sum amount are as follows:

- Technology and information systems
- Vehicle maintenance
- Staff time and overtime charges
- Fire hall maintenance
- Fire hydrant testing
- Fire hydrant maintenance
- Fire station maintenance and repairs
- Administration and operational costs (e.g., dispatch services)
- Fire inspection services and bylaw enforcement
- Insurance

Solid Waste

Solid waste fees, like fire protection, are usually established at a per household basis and charged in the form of a lump sum. Some costs that must be accounted for in the total service fee include, but are not limited to, the following:

- Transportation costs
- Staff salaries
- Equipment maintenance and repair
- Equipment replacement
- Landfill fees
- Transfer station fees
- Upgrades required for regulatory changes (environmental)

Animal Control

Animal control pricing is typically set on a per capita basis or as a lump sum amount with additional charges tallied at the end of the year for additional costs which could not have been predicted by either party to the service agreement (e.g., if the animal control officer appears in court or additional veterinary charges are incurred). An animal control agreement that is priced according to actual costs of the service will consider the following:

- Shelter operation and maintenance costs
- Animal control officer's time and benefits
- Animal control officers training costs
- Animal control officer's vehicle operation costs
- Animal control officer's equipment costs and maintenance
- Animal licensing costs
- Administration costs (e.g., to hear complaints, dispatch animal control officer)
- Appropriate fees for average veterinary costs for captured or impounded animals

Additional fees may be charged for the following:

- The court appearance of the animal control officer for violations of the animal control bylaw
- Overtime fees accrued by the animal control officer for emergencies outside of regular office hours which occur on the service receiver's land
- Additional veterinary costs accrued from animals captured on the service receiver's land



3.3 Sample pricing models

This section of the toolkit explores pricing options that your community can consider when approaching methods for pricing a service agreement.

These models are for your consideration as examples of effective and transparent pricing options and are by no means a definitive list of pricing arrangements. Ultimately, an effective pricing model will vary in every circumstance and will take into consideration local contexts, which may include the following:

- Population
- Capacity
- Existing infrastructure
- Service needs
- Local politics

Model 1: Population ratio pricing model

The following model uses a water and wastewater service agreement as its example, although the population ratio method can be used to determine pricing for solid waste and fire protection. Alternatively, this ratio can also be used to calculate the pricing for all four services in a comprehensive agreement.

CHARACTERISTICS:

- The service provider supplies all the operations and maintenance (O&M) — meaning that this pricing model is an effective way for service recipients with small populations and low capacity to price services.
- This pricing model is very transparent — it ensures that all costs are well understood. It offers an equitable split of O&M costs.
- Population ratio pricing assumes that the required infrastructure exists.
- This model can be modified on an annual or biennial basis to reflect population and expenditure changes.

MODEL:

A total cost of the O&M to all existing infrastructure will be calculated for the municipality and the First Nation. The total O&M cost should include the following considerations:

Water

- operators' salaries (full-time and part-time)
- facilities including plants, reservoirs and pumphouses
- water mains (supply and distribution mains)
- meters and valves
- chemical and treatment costs
- raw water pumphouse
- raw water supply
- monitoring costs

Wastewater

- lift stations
- mains, force mains, gravity mains
- lagoons (if applicable)
- treatment facility
- chemical and filtering costs

Total average yearly costs for the O&M of these facilities and services should be tallied into a total cost. The total cost will then be plugged into the following formula:

$$\begin{aligned} & \text{Total O\&M costs} \times (\text{First Nations population} \div \text{municipal population}) \\ & = \text{Total First Nations proportionate contribution} \\ & \text{to annual servicing costs} \end{aligned}$$

Model 2: Metered rate — Individual fee-for-service model (two-part rate)

The following model can be used to determine the pricing for a water service agreement. This model assumes that the municipality is providing the service as the pricing is based on municipal metered water rates and tax rates.

CHARACTERISTICS:

- The O&M will be provided by the recipient and the provider of services. The recipient shall be responsible for the O&M on infrastructure on their lands and the provider will ensure that infrastructure in its jurisdiction is in good working order, including the treatment facility.
- This pricing model is transparent. It ensures that the real costs of providing a service, including the upkeep of the treatment facilities, are considered.
- This model does not assume any pre-existing infrastructure. It assumes that the recipient will cover all capital costs within its jurisdiction, which may come about as a result of the service agreement, regardless of whether the cost will include the initial installation of the infrastructure (which should conform to the service provider's engineering and design specifications) or the O&M of pre-existing water systems.
- If the First Nation does not have the capacity or equipment to make repairs or install infrastructure, these processes would be contracted to a private firm or separately contracted to the municipality.
- A service agreement using this pricing model would reflect water rate changes over time, minimizing the need for renegotiation.
- The number of households would need to be re-examined every year to ensure that the rates are consistent with community growth.
- In this model, communities should share their community development plans and

growth estimates to ensure that there is enough capacity to provide for long-term community growth.

MODEL:

The service provider will install a meter at the point of connection between the municipal systems and the First Nation's systems. This meter will be read monthly (or however often is agreed upon) to establish the overall water consumption of the service receiver. The service receiver will then be charged according to the current water rate. This rate may change from time to time as reflected by system upgrades and increased demands on the system due to regulation changes. In effect, the service receiver will pay the metered rate equal to what a resident of the service provider would pay. In addition, the municipality would charge the band an additional fee for service rate per household. This fee would be a service charge equal to the indirect contributions that each municipal household makes to water treatment facility O&M through municipal taxes. However, because the two governments cannot tax one another, the fee ensures that the contributions to the water systems are in fact equal between First Nations and municipal residents.

The fee-for-service rate will vary across the country. The municipality should establish this fee based on a study of tax revenue breakdown and expenditures. The fee should then be negotiated and agreed upon in joint discussions with the First Nation. In this arrangement, the service receiver would be responsible for maintaining the systems on its lands. Therefore, it is important to keep in mind that this fee should reflect only the cost of maintaining and operating the water treatment plant and not cover the cost of large scale repairs elsewhere. Although an exact calculation is difficult to establish, the metered rate pricing model is a workable and transparent method for setting the payment structure.



Model 3: Annual operations and maintenance contributions — Metered rate model

The following model can be used to determine the pricing for a water service agreement. This model assumes that the municipality is providing the service as this pricing model is based on municipal water rates.

CHARACTERISTICS:

- The service provider provides the O&M.
- This model does not assume any pre-existing infrastructure — it assumes that the recipient will pay the up-front capital costs to have the water systems installed on its lands to the specifications of the service provider.
- Annual contributions will be determined and paid as a lump sum to the service provider. They will reflect the estimated costs of O&M based on the number of water systems and a proportionate contribution to the O&M of the treatment facilities.
- Recipients of services will be charged the municipal metered rate based on a meter that will be installed at the point of connection between the provider and the recipient lands.
- This model requires renegotiation of the annual capital contributions every few years — this requirement must be specified in the service agreement.
- As best practice, we recommended that communities using this model share their community development plans and growth estimates to ensure that there is enough capacity to provide for long-term community growth.

MODEL:

Assuming that the municipality is the provider of services, the municipality would charge the band two distinct fees.

The first fee is the annual contribution to the O&M of the water systems. It comprises a service charge of the estimated costs of maintenance on the First Nation's lands and a proportionate contribution to the O&M of the treatment facilities located on municipal lands.

The second fee is for the actual metered amount of water used. In addition to the lump sum payment above, the municipality will install a meter at the point of connection between the municipal systems and the First Nation's systems. This meter will be read monthly (or however often is agreed upon) to establish the overall water consumption of the First Nation. The First Nation will be charged the current municipal rate, which may change from time-to-time as reflected by system upgrades and increased demands upon the system due to regulation changes. In effect, the First Nation will pay the metered rate equal to what a municipal resident would pay for their water consumption.

This model is ideal for service receivers that have limited capacity to perform ongoing maintenance to the water systems.

Model 4: Tax-equivalency pricing model

It can be difficult to separate out the costs of individual municipal services. Thus, for comprehensive service agreements where municipalities are providing the services, fees equivalent to municipal service taxes can be established for First Nations who are receiving such services. Not only is tax equivalency easier to establish, oftentimes tax equivalents end up being less costly than charging individual full cost for each service.²

CHARACTERISTICS:

- used for comprehensive service agreements (e.g., fire, solid waste, recreation)
- population and user-based
- equality in pricing between First Nation and municipal residents
- services are provided by the municipality
- flexibility from year to year prevents timely renegotiation of annual rates

Depending on how the municipality has set up its tax structures, water pricing can be charged in addition to the tax equivalent as many municipalities charge their residents with user fees or metered rates.

MODEL:

Assuming that the municipality is the service provider, the tax-equivalency pricing model treats First Nations lands as if they were part of the municipality. Thus the First Nations are charged the tax equivalent for a range of local services. Services that are not provided, such as municipal planning and zoning, must be subtracted from the total charge. A First Nation can be credited for services that it provides to municipal residents if the First Nation provides a service that is available to municipal residents (e.g., a recreation centre). If water is not included in the municipal taxes, the fee structure provided in sample models 1–3 could be used in addition to tax equivalency.

What are offset costs?

When considering a tax-equivalency pricing model for a comprehensive agreement, the service receiver is usually providing services to the service provider's land and residents as well (e.g., a recreation complex, library, etc.). Offset costs recognize this contribution and reduce servicing costs by the estimated value of the assorted services that the service receiver may provide to the service provider's community.

² Bish, Robert and Tyrone Duerr. *First Nation/Local Government Service Contracting*. First Nations Tax Administrators Institute, University of Victoria (1997), p. 12.



4. Service agreement renegotiation: Updating an expired or out-of-date agreement

Renegotiation offers the opportunity to improve partnerships and service delivery by a process of refining existing practices, identifying lessons learned and working collaboratively to develop a new service agreement. Many communities have expressed difficulty in clearly identifying the gaps in expired service agreements and making changes for more effective partnerships. The following chapter provides easy-to-use checklists and charts to help both First Nations and municipalities address expired agreements and ensure service agreements continue to benefit both communities.

4.1 Evaluating your past relationship and service agreement

Before entering into a renegotiation, it is important for both partners to step back and evaluate both the quality of the past service agreement(s) and the quality of the partnership. By identifying challenges and lessons learned in the past, both parties can come to the table prepared to make the necessary changes to address these issues or concerns. The process of evaluating a partnership or service agreement can take a variety of forms, but generally should consider the following questions:

General:

- Are there any things that we can change to make this partnership/service agreement function more effectively?
- Did our service agreement accomplish the tasks it set out to do?
- Which areas of this partnership did not meet my expectations?
- Were my expectations realistic and achievable?
- What challenges are out of my control? (legislation, funding, etc.)
- What are the top five lessons I can take away from this experience?

Financial:

- Did the pricing calculations for services in the previous agreement meet our needs and expectations?
- Did some aspects of the service agreement cause an unexpected financial burden? If so, will they need to be resolved in the next agreement?
- Was the service agreement a good return on investment?
- How can I ensure that any financial issues are resolved in future agreements?

Communication and Organization:

- How am I communicating with my partner? Are there any changes I can make to ensure more effective communication in the future?
- How is my partner communicating with me? Are there any specific requests that I can make to ensure that my needs are being met more effectively?
- Are there more opportunities for sharing information and best practices?
- Were there any aspects to the agreement implementation that seemed unorganized? What changes can be made to ensure more effective implementation?

4.2 Principles of renegotiation

While many similarities exist between negotiation and renegotiation of service agreements, it is important to keep some additional principles in mind that can help keep negotiations on track.

Arrive prepared

Before meeting with your partner community, ensure that you have properly evaluated your past relationship and service agreements. It is important to come to the table with clear expectations for future agreements and suggestions for changes that would make the existing service agreement more robust. For additional resources to help prepare for service agreement renegotiation, please see **Unit 3, Chapter 4.4: Filling in the gaps: Service agreement renegotiation tool**.

Recognize your achievements

Recognition of achievements is an important step that can help set the tone for renegotiating existing agreements. It is helpful to frame why the agreement is important and shed positive light on the benefits of working together and having a healthy community. Parties might find brainstorming a list of achievements and positive aspects about previous service agreements a useful tool when negotiating future collaboration.

Be prepared to make changes

Recognize that if you have issues you would like to address in the new service agreement and relationship, you must be prepared to hear about issues your partner has faced. Both parties must be flexible to each other's needs. By keeping an open mind to the other parties' perspective on challenges they experienced and trying to address all issues openly and honestly, the new service agreement will better serve everyone's objectives — making for better partnerships in the long run.

Establish goals and purpose before you meet

Renegotiating a service agreement can seem like an overwhelming task. To ensure you are managing your time effectively it can be useful to break down the renegotiation process into several smaller meetings where specific aspects of the previous relationship and agreement are discussed. For example, one meeting could be dedicated to identifying positive aspects of past collaboration, identifying other services where collaboration is possible and evaluating challenges with the past relationship and service agreement. The following meeting could be dedicated to addressing legal gaps in the expired service agreement. The changes could be summarized and drafted at a later meeting.

4.3 Challenges of Renegotiation

Although renegotiation can be easier than the initial negotiation process as communities are not starting from scratch, there are a few common challenges. By preparing for these potential issues, often they can be avoided.

Potential disputes

If service agreements have been expired for long periods of time, communities may be hesitant to open up these agreements to renegotiation due to fears of potential disputes. Disputes could arise from a lack of understanding from both parties, lack of clarity in the existing agreement or lack of political will. Potential disputes can be minimized by keeping an open mind to differing perspectives and keeping the common goal of enhancing services and regional health at the forefront.



Time

Renegotiation, like negotiation can be time-consuming. This is particularly troublesome for small communities with limited capacity and staff time. Ultimately, a service agreement renegotiation will take differing amounts of time depending on the situation. If communities meet infrequently and a service agreement has been expired for several years, this process will take much longer than an expired agreement between communities that regularly meet and renegotiate their agreements. Regardless, communities can take steps to ensure that the renegotiation is a smooth process, including properly preparing before meetings and setting realistic goals and objectives for each meeting to ensure you remain on track.

4.4 Filling in the gaps: Service agreement renegotiation tool

The following table is a useful tool for communities looking to renegotiate or update existing service agreements where significant gaps are present. To use this table, compare each provision listed in the lefthand column with your existing service agreement. This table should be used in conjunction with **Unit 3, Chapter 2.2: Service agreement provisions** for a detailed definition of each provision and its role in a service agreement. This tool will allow you to quickly and easily identify weaknesses in the existing service agreement saving time and increasing capacity. For a collaborative approach, it is recommended that communities arrange a joint meeting where **Table 1: Service agreement renegotiation tool** can be completed together. This approach will accelerate the renegotiation process and ensure everyone is on the same page.

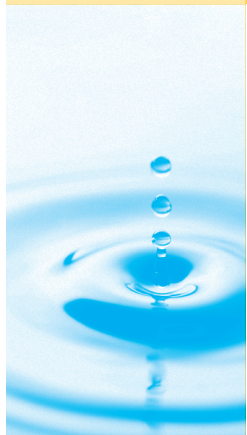


Table 1: Service agreement renegotiation tool

Provision	Essential Elements	Appears in old agreement? (yes/no)	Notes
Effective date	- Clearly stated date that both parties agree to as the date the agreement becomes legally binding		
Parties to the agreement	- The parties involved in the agreement are outlined in the first page of the agreement		
Authority to enter into agreement	- A statement or evidence of approval from the band and municipal council to enter into a service agreement - Resolutions or bylaws are attached as a schedule to the agreement		
Preamble	- Sets out the purpose of the agreement in general terms - Recognizes both parties' willingness to enter into the agreement		
Definition of terms	- All short forms or vague expressions are defined in plain language. This could include <i>reserve</i> , <i>services</i> , <i>agreement</i> , etc. - Definitions may reference a schedule for more information (e.g., a map of reserve/municipal boundaries) - Definitions should appear at the beginning of an agreement for clarity and organization purposes		
Term of agreement	- Defines the number of years the current agreement is valid - Sets out procedures for early termination		
Renewal of agreement	- The number of months previous to the end of the term notice of renewal is required from either party - The number of months previous to the end of the term that renegotiation should commence - Overholding status (month to month) if renegotiation is not completed in time		
Applicable law	- Optional: restatement of general application of provincial laws, except, in the case of First Nations, where the <i>Indian Act</i> contradicts those laws		
Constitutional and legislative changes	- The effect legislative changes at the provincial or federal level will have on the agreement (e.g., wastewater regulation changes)		
Consent by interested party	- Needed only when a private contractor will be used (e.g., construction, waste removal) - Notes that any agreements with the contractor will not affect the agreement		
Description of services	- List of specific services that will be provided under the agreement		
Level of services	- A statement that quality of service will be equal between the First Nation and municipality - Could also stipulate that level of service may fluctuate from time to time		
Charges for services	- Fair fees for a service, actual cost of providing the service will be charged - Lays out pricing calculations in a transparent manner — for example, pricing was based on average monthly consumption of water or number of times per month waste is collected - Includes capital, O&M and renewal of infrastructure, if applicable - Full pricing calculations should be attached to the agreement as a schedule		



Provision	Essential Elements	Appears in old agreement? (yes/no)	Notes
User fees or additional charges	- Additional charges that may occur such as a one-time capital contribution or additional fees per household		
Bill payment	- How often charges must be paid (annually, monthly, quarterly, etc.) - How the payment will be delivered - How late fees will be calculated		
Payment penalties and termination for breach of agreement	- May stipulate a letter of credit will be held by the service provider in the case of non-payment - How long non-payment will be accepted before the agreement is considered terminated		
Construction of infrastructure	- Establishes who is responsible for the construction and costs of the infrastructure - Construction standards or bylaws that must be met should be referenced		
Ownership of infrastructure	- If infrastructure was constructed, who owns which portions of the infrastructure - Schedules of maps could be added to clarify		
Repair	- Outlines the boundaries of repair responsibilities or the extent to which parties are responsible for repairs on their lands - Costs for repair should be reflected in the “charges for services” section		
Access and rights-of-way	- Outlines to what extent the service provider may access the service receiver’s land (e.g., in the case of fire inspection)		
Liability	- A statement removing liability for fluctuations in service levels and quality from the service provider		
Notice	- Addresses where communication about the agreement should be sent - The position or department the notice should be directed to - Fax numbers and telephone numbers should also be provided		
Entire agreement	- A statement indicating the agreement is to be interpreted as a whole, not in sections		
Headings	- A statement indicating that the headings used in the agreement simply help organize the agreement, rather than helping interpret the agreement		
Amendment	- Outlines the procedure for amending the agreement before the end of term		
Assignment	- Whether the agreement can be assigned to new parties, such as in the case of amalgamation		
Enurement	- A statement ensuring the agreement is binding on successive governments until the end of the agreement term		
Severance	- The procedure and effect of removing a single clause from the agreement when it is deemed no longer valid		
Waiver of breach	- A statement indicating that silence or lack of action should not be interpreted as an unwillingness to continue the agreement or breach of the agreement		
Conflict and dispute resolution	- Optional clause outlining preferred dispute resolution procedure(s) to be used if necessary		



5. Regulatory challenges

First Nations and municipalities represent different orders of government and, although many of their responsibilities to their community members are similar, they operate under separate legislation and with different jurisdiction. These realities can complicate cooperation on local services but, if dealt with in a transparent manner, do not limit communities' ability to enter into service agreements. This section is meant to highlight a few key regulatory challenges that both First Nations and municipalities should consider before entering into a service agreement.

5.1 Water regulations

First Nations and municipalities water is regulated by different levels of government and by different protocols and legislation.

As outlined in **Unit 2, Chapter 2: Municipal and First Nation governance structures**, municipalities operate under provincially mandated legislation that includes the provision of potable water.³ Nunavut and the Northwest Territories fall under the mandate of the Department of Aboriginal Affairs and Northern Development (AANDC).

The precise regulations surrounding water quality and treatment vary from province to province (e.g., chlorination, fluoride and turbidity). However, all provinces meet the basic requirements as stipulated by Health Canada Guidelines for Canadian Drinking Water Quality and updated by the Federal-Provincial-Territorial Committee. The Guidelines for Canadian Drinking Water Quality deal with microbiological, chemical and radiological contaminants as well as physical characteristics such as taste and odour. The Guidelines

are neither binding nor enforceable, but rather act as standards and objectives.

First Nations typically follow the *Protocol for Centralized Drinking Water Systems in First Nations Communities* for potable water supply. The Protocol contains standards for design, construction, operation, maintenance and monitoring of drinking water systems in First Nations. Generally, potable water provision in First Nations communities is a responsibility shared by several different groups: First Nations, circuit riders, tribal councils, AANDC, Health Canada and Environment Canada. The Protocol is intended to help these departments provide advice or assistance to First Nations in the design, construction, operation, maintenance and monitoring of their drinking water systems. The Protocol is considered enforceable for any water system that produces water for human consumption, is funded in whole or in part by AANDC and serves five or more households or a public facility. First Nations must also, at minimum, meet the Health Canada Guidelines and in instances where standards are not met, boil water

³ For more information on provincial and territorial water legislation, please visit Environment Canada's Water Governance and Legislation webpage: <http://www.ec.gc.ca/eau-water/default.asp?lang=En&n=24C5BD18-1>



advisories are recommended to the Chief and council of that First Nation.⁴

It is important to note that the Protocol stipulates communities are to act in accordance with the provisions in the Protocol except in the case of more stringent provincial legislation or part thereof (e.g., if turbidity requirements are more stringent in Ontario than stipulated in the Protocol, Ontario First Nations are to adopt the turbidity requirements of Ontario). In the case where a component of provincial standards is adopted, the rest of the Protocol still applies to the First Nation; it is not possible for a First Nation to opt out of the Protocol.⁵

Although First Nations and municipalities follow different water regulations (legislation versus protocol) and enforcing bodies or departments, both municipalities and First Nations must both comply with the *Fisheries Act* and the *Canadian Environmental Protection Act* either directly or through the provinces.

5.2 Wastewater regulations

Environment Canada released new proposed wastewater treatment regulations for municipal, community, federal and other wastewater systems, including proposing standards for national wastewater effluent quality. The regulations, scheduled to take effect before the end of 2011, will set national standards for more than 3,500 wastewater treatment systems. The proposed regulations will phase out the dumping of untreated and undertreated sewage into our waterways and provide clarity for rules on reporting for more than 3,700 Canadian facilities.⁶

Under these new regulations, both municipalities and First Nations would be held to the same standard of wastewater treatment, enforceable through the federal or provincial government under the *Fisheries Act*.

Currently, wastewater regulations are implemented similarly to water regulations: First Nations operate under protocols developed by Health Canada and AANDC, while municipalities follow provincial legislation while both must also comply with the *Fisheries Act* and the *Canadian Environmental Protection Act*.

5.3 Changes to regulations

In addition to challenges pertaining to jurisdiction and the interaction of legislation, changes to regulations (e.g., new wastewater regulations) can cause costs for local services to increase drastically due to necessary capital improvements and/or increased operation costs.

In order to prevent challenges relating to regulatory changes, it is recommended that communities entering into service agreements include mechanisms for increasing the price of services as a result of regulatory changes in order to avoid unanticipated financial burdens.

Unit 3, Chapter 2.2: Service agreement provisions, highlights a number of ways communities may consider incorporating a mechanism to deal with these challenges including review of service fees on an annual basis and automatically shifting fees (e.g., metered rates). In the case that a flat rate for water was established rather than a metered rate, it would certainly be in that community's interest to consider a "costs escalator clause" that will identify a

⁴ For more information on boil water advisories, please see the Health Canada First Nations, Inuit and Aboriginal health website: http://hc-sc.gc.ca/fniah-spnia/promotion/public-publique/water-eau-eng.php#what_is

⁵ A complete version of the *Protocol for Centralized Drinking Water Systems in First Nations Communities* can be found at: <http://www.ainc-inac.gc.ca/enr/wtr/dwp/dwp-eng.pdf>

⁶ For more information on the proposed water regulations, please see Environment Canada's website: <http://www.ec.gc.ca/eu-ww/default.asp?lang=En&n=BC799641-1>

review period for the established service fees, and adjust the fees according to service cost increases experienced by the community providing the service.

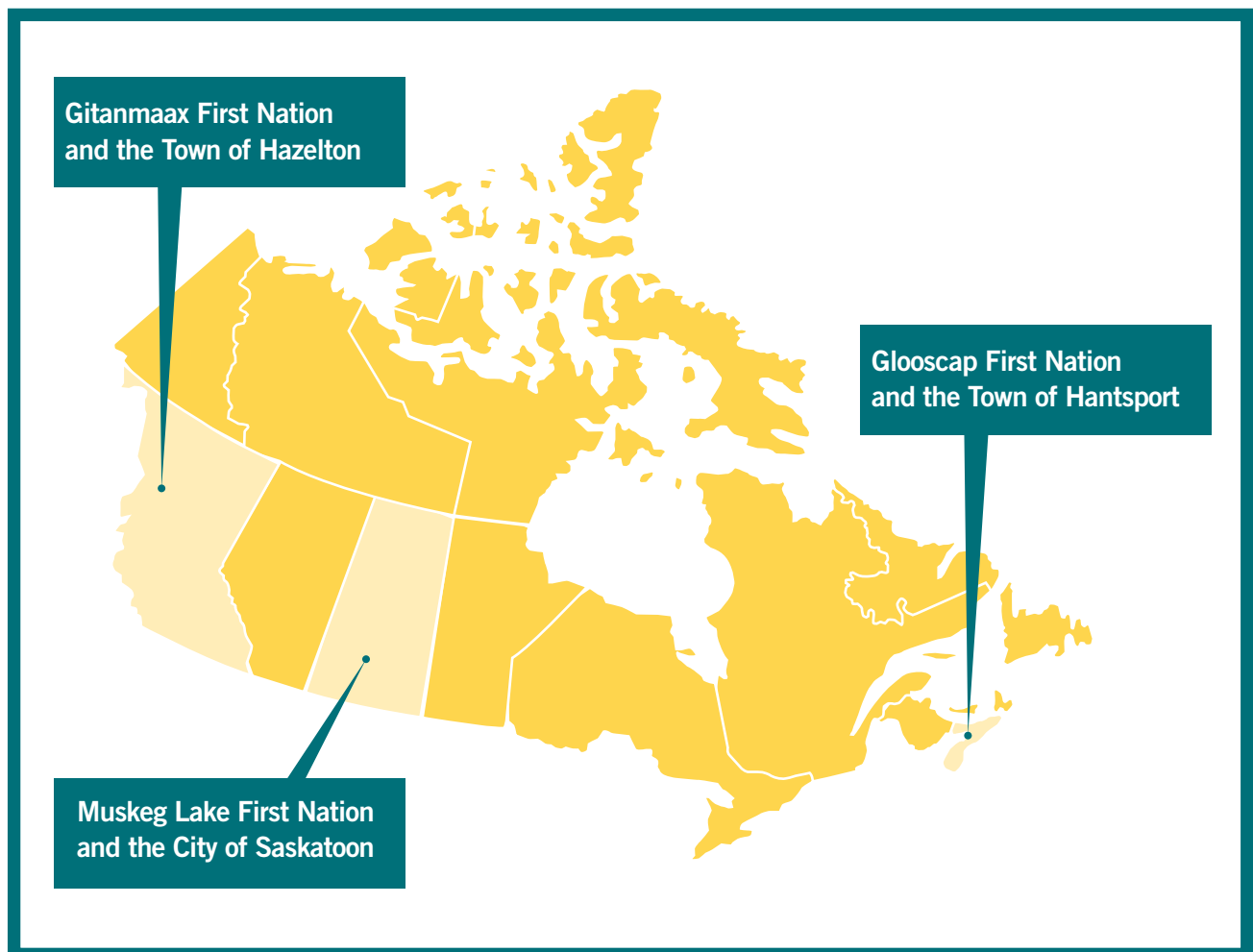
The CIPP service agreement templates for animal control, solid waste, fire protection, transit, and comprehensive agreements include the establishment of an annual fee that is revised each year to meet changing demands within a five- or ten-year term. In the case of water and wastewater, ideally, these costs would shift automatically overtime in accordance with established metered rates and local tax subsidization for the service.





6. Service agreement case studies

Service agreements between First Nations and municipalities have developed across Canada over the past 30 years. A wealth of knowledge can be derived from learning from a variety of communities (urban, rural, remote, northern, etc.) and their various experiences with service agreements and lessons learned. The purpose of the following chapter is to provide First Nations and municipalities with case studies that provide realistic and relatable situations that can provide guidance and new and innovative approaches to collaboration on services.



Case Study



6.1 Gitanmaax First Nation and the Town of Hazelton (BC)

Location:

West Central British Columbia near the junction of the Skeena and Bulkley Rivers

Population:

Village of Hazelton: 292

Gitanmaax First Nation: 850

Cost-sharing projects:

Water treatment plant, waste-water system, water line maintenance, transit, and fire protection

Additional Partners:

Aboriginal Affairs and Northern Development Canada

Lessons learned:

“When you look at the ‘big picture,’ we both want the same for our people, but we have different ways of doing things based on our different cultures, legislation and requirements.”

Kelly Mattson, Administrator, Village of Hazelton

Contacts:

Kelly Mattson
Administrator
Village of Hazelton
administrator@village.hazelton.bc.ca
Tel.: 250-842-5991

Dianne Shanoss
Executive Director
Gitanmaax First Nation
Tel.: 250-842-5297

Service agreements and cost-sharing projects

Water and sewer

Gitanmaax First Nation and the Village of Hazelton have been working together since the 1970s and are joint owners of the water and sewer systems that serve both communities. The water and wastewater system is divided, with Gitanmaax First Nation managing and owning the operations of the water treatment plant on the reserve, and the Village of Hazelton managing and owning the operations of the sanitary sewer treatment plant on municipal land. They currently have an informal water and sewer agreement in place. These communities also cost share on extraordinary maintenance costs and capital improvements and are currently negotiating an agreement for a water treatment plant upgrade.

Fire Protection

The two communities also work together on several other community services, including a jointly run volunteer fire department. Each community owns its own fire trucks, and they both share fire protection services using 22 trained volunteer fire fighters. The department is operated by two fire Chiefs with one Chief from each jurisdiction. This allows both communities to offer opportunities for the residents to work in fire protection services and ensures both communities feel a sense of ownership in providing the service.

Transit

Gitanmaax First Nation and the Village of Hazelton also work on joint projects with the District of New Hazelton and other First Nations in the Hazelton area. They are participants in a multi-party agreement for regional transit services that serve the local First Nations, municipalities and outlying areas.

Recreation

The communities are also considering the possibility of jointly funding and operating a new arena that would serve the region in conjunction with several other local government entities and a non-profit association.

Other shared services

In addition to various service agreements and cost-sharing initiatives, the two communities provide services to their residents. Services include a local hospital, one high school, several elementary schools, retail stores, restaurants and a museum. With numerous connections established between the two communities, effective communication between community administrations is not only essential, it is also critical for effective service provision.

Challenges

Communication

The administrations from Gitanmaax First Nation and the Village of Hazelton have a joint management committee that meets on issues as they arise, although they strive to meet at least quarterly to maintain open lines of communication. The Gitanmaax First Nation also meets monthly with three other Gitksan communities to share information. In addition, each community holds its own meetings to plan events and share information. Although Gitanmaax First Nation and the Village of Hazelton strive to keep in touch regularly, it can be challenging having the same council members attend all meetings.

Long-term challenges include learning to work through cultural differences in processes and management styles and adapting to changes in personnel. A change in administration can sometimes change the focus of priorities for a community and it may take time to develop a new working relationship.

Historical grievances have at times caused strained communication between the two administrations. They continue to seek to work through their concerns by focusing on achieving similar goals, debunking assumptions, clarifying expectations and having a working relationship based on equality and mutual respect. These communities have found communicating at all levels of leadership to be an important part of fostering effective working relationships. An example of this is inviting technical advisors (e.g., engineers) to attend and advise at operational meetings.

Legislation

Municipalities and First Nations are governed by different legislations, and it can be a challenge to balance the different requirements for each community. For example, municipalities must meet federal and provincial water regulations and First Nations follow water guidelines through AANDC. The different guidelines can be an obstacle when trying to achieve consensus on water issues.

Revenue/Funding

Given that municipalities rely on taxation revenue as a main source of income and First Nations rely on funding from AANDC, each community tries to keep in mind its different fiscal processes and fiscal restraints when collaborating on projects. Municipalities may need to apply for grants from the provincial government for additional income to fund projects, and First Nations may have a lengthy wait for approval for additional income from AANDC. Gitanmaax First Nation and the Village of Hazelton strive to be transparent and patient in working together on project funding.

Conclusion

The case study of Gitanmaax First Nation and the Village of Hazelton provides a good example of how a positive working relationship between a First Nation and a municipality can improve their respective small communities by providing infrastructure needs and community services in a cost-effective and mutually beneficial manner.



Case Study



6.2 Muskeg Lake First Nation and the City of Saskatoon (SK)

Location:

Central Saskatchewan near the banks of the South Saskatchewan River

Population:

Muskeg Lake Cree Nation: 300–350 on reserve

City of Saskatoon: 224,300

Projects:

All hard and soft services are provided by the City of Saskatoon to Muskeg Lake Cree Nation on a fee-for-service basis.

Keys to Success:

“Both Mayor and Chief encourage their staff to communicate with each other.”

Theresa Dust, solicitor, City of Saskatoon

“Be supportive of one another. Learn about each other’s communities. Have a good understanding of each other. Be committed to the overall partnership. Be committed to the process.”

Chief Clifford Tawpisin, Muskeg Lake Cree Nation

“Maintain the level of trust and make sure you follow through. Make sure you understand one another and understand the by-laws.”

Chief Clifford

Tawpisin, Muskeg Lake Cree Nation

Contacts:

Theresa Dust, City Solicitor

City of Saskatoon, SK

Tel.: 306-975-3270

Email: Theresa.dust@saskatoon.ca

Chief Clifford Tawpisin,

Muskeg Lake Cree Nation, SK

Tel.: 306-466-4959

Email: cwtawpisin@muskeglake.com

Urban Reserves

An urban reserve is land within a city that has been purchased by a First Nation and granted reserve status by an Order-in-Council of the Federal Cabinet. Land does not become a reserve just because a First Nation owns it. Reserve status is obtained by going through a process that results in a federal designation of the land as reserve.

Urban reserves are then created by a First Nation purchasing a parcel of land on the open market and then proceeding through the reserve creation process.

(Theresa Dust, “Common questions about Urban Development Centres in Saskatchewan,” 2006, page 1.)

Saskatoon is centrally located in the province of Saskatchewan on the banks of the South Saskatchewan River. The Saskatoon area has been inhabited for 6,000 years and was first settled by Europeans in 1883.

The first urban reserve in Canada was created in 1998 in Saskatoon by Muskeg Lake First Nation. This new reserve was a result of the Federal Additions to Reserve Policy. “It was unique because of a series of agreements between the city and Muskeg Lake regarding compatible land use, services and tax loss compensation,” said Theresa Dust, City of Saskatoon solicitor.

Service agreements

Before signing the first service agreement with the City of Saskatoon in 1988, the Muskeg Lake urban reserve was a large, unserved site. The first service agreement took some time to finalize because both parties were unfamiliar with the process and implications of creating a reserve within the city. It was a learning process for everyone. However, both the Mayor of Saskatoon and Chief of Muskeg Lake were determined that the creation of an urban reserve should materialize for economic development reasons.

The creation of the Muskeg Lake urban reserve and the signing of the service agreement created economic, social and cultural opportunities for both communities. It also provided opportunities for new businesses, which means potential jobs for the growing number of First Nations living in urban centres. The city benefits from the economic spinoffs of these new jobs and residents benefit from the services offered by the new businesses and amenities located on the lands.

The land uses on the urban reserve are very broad, but as per the agreement, they do not include heavy industry. Every time a new business comes to the reserve it is required

to pay a levy that Muskeg Lake then passes on to the City of Saskatoon.

In 1993 the communities signed a new agreement, the Municipal Services and Land Use Compatibility agreement. The communities felt the process was much simpler with the newer agreement, given that they had a template to start with and they had worked through many of the initial challenges in 1988. In the 1993 agreement, a service station was also turned into urban reserve land. The later agreement also included a mechanism for binding arbitration, which is a standard clause in agreements with the City of Saskatoon.

Muskeg Lake wanted its parcel of land to look no different than the rest of the City of Saskatoon, which greatly facilitated the agreement negotiation process. In terms of access to services, Muskeg Lake residents receive the same benefits as any other Saskatoon resident; however, in terms of jurisdiction, they are not. The City of Saskatoon recognizes Muskeg Lake Cree Nation as a distinct government.

The agreement signed between Saskatoon and Muskeg Lake was similar to an agreement that would be signed between the city and developers. The City of Saskatoon agreed to build all the basic infrastructure (e.g., sewers, roads) and Muskeg Lake agreed to provide services on par with what already exists in the city through a comprehensive service agreement.

Muskeg Lake pays a fee-for-service (with the exception for education services) that is equivalent to property tax in Saskatoon. In return, the city provides all hard and soft services such as water, wastewater, fire protection, street sweeping, etc. Muskeg Lake receives an annual statement outlining the services provided by the City of Saskatoon, much like a property tax statement.

During this process, Muskeg Lake and the City of Saskatoon learned a lot about each other, including how cities and First Nations can do business and about bylaw compatibility. Muskeg Lake and city staff make themselves available to support each other whenever there are any questions or concerns.

Economic development

There is no formal agreement on economic development. However, the Mayor and Chief were determined that the creation of an urban reserve would help realize economic development opportunities for both partners. In addition, the city and the First Nation regularly discuss opportunities for the area and how they can work together to increase regional economic development.

There is a great deal of trust and open communication between the two communities about changing needs. For example, when Muskeg Lake raised a concern about needing a bridge built, the City of Saskatoon agreed to build the bridge with a simple handshake. The city also financed the bridge and arranged a yearly payment schedule for Muskeg Lake to repay the bridge costs over a manageable period of time.

Relationship building

Every year before Christmas, the Mayor, the Chief and their administrations hold a formal meeting that consists of a Christmas lunch and gifting. In the past, a meeting agenda was developed; however, in recent years the meeting begins with the Mayor and Chief each giving speeches outlining any issues and plans in their respective communities that may have an impact on their neighbour. The communities keep in contact throughout the year, through phone calls, letters, and emails.

The Mayor and Chief have an open door policy and know each other well enough to pick up the phone and speak openly with one another. This open communication helps avoid potential conflict.

Challenges

Land assessment

One issue that has arisen in the past is the valuation of the land belonging to Muskeg Lake Cree Nation. The communities decided on a market value assessment system because Muskeg Lake was concerned that the assessor had valued their lands too high, which increased their fee-for-service charges.

Under other circumstances, an appeal could be made to the provincial Board of Revisions. Muskeg Lake, however, did not want to use a provincial authority for making this type of decision. The city suggested that an Arbitration Board be created with the same membership as the Board of Revisions. In the end Muskeg Lake communicated its concerns to the assessors and came to an agreement. Therefore, the Arbitration Board was never used and the issue was resolved.

Conclusion

Many of the concerns that both communities held in 1998 about what could potentially happen with an urban reserve have proved to be unfounded. The process of negotiation was smoother than anticipated.

For both communities, the process of negotiating an urban reserve entailed a process of mutual learning about one another. Each community was supportive of the other in this learning process and continued to openly dialogue with each other to resolve outstanding issues.

Muskeg Lake First Nation and the City of Saskatoon have built a model for urban reserve development and servicing that will be beneficial to other communities hoping to enter into the same type of agreement. The strong, trusting relationship that underlies the agreements has been critical for the continuing open dialogue that exists between the two communities.

References

City of Saskatoon Urban Reserves,
Frequently Asked Questions:
<http://www.saskatoon.ca/>

Dust, Theresa, "Common questions
about Urban Development Centres
in Saskatchewan," 2006.

Web site for Theresa Dust,
(City of Saskatoon's Solicitor):
<http://www.tdust.com/urban.html>



Case Study



6.3 Glooscap First Nation and the Town of Hantsport (NS)

Location:

Bay of Fundy, Nova Scotia (approximately 80 km west of Halifax)

Population:

Glooscap First Nation: 87 (on-reserve population)

Town of Hantsport: 1,200

Project Information:

Joint water treatment facility

Project Cost:

\$3.4 million (AANDC indirectly funded the project for \$600,000; Glooscap First Nation contributed \$2.4 million; the Town of Hantsport contributed \$1 million)

Additional Partners:

Nova Scotia Environment, Health Canada, Public Works and Government Services Canada

Lesson Learned:

“Recognize problems before they become a huge issue.”

Jeffrey Lawrence, CAO, Hantsport, NS

Contacts:

Shirley Clarke

Chief, Glooscap First Nation, Nova Scotia

Tel.: 902-684-9788

Michael Halliday

Band Manager and Councillor, Glooscap First Nation, Nova Scotia

Tel.: 902-684-9788

Jeffery Lawrence

CAO, Town of Hantsport, Nova Scotia

Tel.: 902-684-3210

What is a Membrane Filtration System?

A membrane system is used to filter ground or surface water. The membrane system usually uses high pressure to force water through a series of semi-permeable membranes, which get increasingly fine and less permeable as the water moves through the system, thus capturing unwanted particles in the water while letting the clean water pass. This method is seen as an alternative to flocculation, sand filters, carbon filters, extraction and distillation. Membrane systems are thought to be more environmentally friendly than other systems. Each membrane filter has an approximate ten-year life span.

Rationale for shared services:

Boil water advisories

In 2001, both the Town of Hantsport and Glooscap First Nation were under boil water advisories. Neither community was able to provide residents with a stable source of potable water. Hantsport collected water from Davidson Lake, a spring-fed lake, and treated it with chlorine. Whenever a power outage occurred, it shut down the town's water supply. In Glooscap, there was no community-wide treatment system; residents relied on poorly maintained wells.

In 2002, Glooscap First Nation underwent a water assessment and received suggestions for ways in which clean water could be provided to residents. One of the suggestions from the engineers was to partner with the neighbouring community for a treatment facility. At the same time, Hantsport was trying to manage its ongoing water problems and seeking solutions. The Glooscap band manager at the time, Janice Walker, approached Hantsport's Mayor and council and suggested that they jointly address their water concerns. From that point forward, both communities began to meet regularly to discuss their needs, concerns and possible solutions in an open and frank manner.

Partnership process: Joint infrastructure

By communicating monthly through joint community meetings, both communities were able to quickly reach an agreement. Both Glooscap and Hantsport used negotiators and lawyers to help them through the process of establishing precisely what they wanted in an agreement and to help them finalize their service agreement.

Given the urgent community need and the regular communication between the communities, the new water treatment facility was operational by 2004. The new state-of-the-art water treatment facility included a new distribution system to which Glooscap First Nation was hooked up. This treatment

facility, located directly across the road from the reserve, has provided both Hantsport and Glooscap with high-quality drinking water. In addition, the facility has the potential to expand, thereby ensuring that the plant is able to meet the communities' future water needs.

During the construction of the project, employment opportunities were available to on-reserve band members. The Town of Hantsport runs the plant and Glooscap staff are also involved in ongoing system maintenance. In terms of costs, the town pays for 60 per cent of the operational costs and the First Nation pays 40 per cent.

Challenges

Government approvals

The new plant is based on a membrane filtration system, which is an environmentally friendly approach to water filtration since the water requires fewer chemical additives. Given that the system was quite new in the province of Nova Scotia, approvals were a very time-consuming part of the process.

Privacy issues

Glooscap First Nation was hesitant to allow meters on houses because of privacy issues; the Town of Hantsport was in support of meters as a way to monitor leakage. The town wanted to check whether the total water that left the treatment plant for the reserve equaled the sum of all the meters. If the numbers were not the same, it would be an early indicator of leakage. Meters were also seen by Hantsport as a way to lower costs. Metered water for the reserve would be cheaper than paying a lump sum based on how far the water has to be pumped because the population density of the reserve is much less dense than in town and metered water would not take such factors into account. The two communities compromised by agreeing that existing meters would still be read as an indicator for leakage, but the First Nation is not billed based on meter readings.

Financing

When the two communities decided to work together, this also meant that Aboriginal Affairs and Northern Development (AANDC) would need to be involved in discussions since it would be partly involved for funding the capital project. AANDC indirectly funded the project for \$600,000.

The communities faced a problem with “double stacking” meaning that funding from two different government departments could not be provided for the same project.

Relationship building

From the beginning, both Glooscap and Hantsport recognized that this was a win-win situation as neither would have been able to afford the system on its own. By recognizing this fact, negotiations moved quickly and smoothly. Both parties acknowledge that the success of their partnership was based on ongoing communication in the form of monthly meetings between councils and managers.

In addition, both Hantsport and Glooscap held community meetings where they could address concerns, quell rumours, address prejudices and relay updates about the process. After the plant was built, Hantsport hosted a number of tours so that members of both communities could see how their water was being treated and the benefits of the project.

Continuing partnership

Hantsport and Glooscap continue to have a congenial relationship and have since collaborated on a number of other mutual community interests, both formally and informally. For example, while the new distribution system on Glooscap First Nation was being installed, new fire hydrants were also installed and are now located on-reserve for the benefit of Glooscap residents. Glooscap now also has access to a large generator,

located in the treatment facility, which Hantsport purchased in the event of a large power outage.

Approximately four years ago, the Town of Hantsport created an Emergency Command Centre in which large-scale emergencies such as forest fires or pandemics can be managed. The room is complete with a computer station, projectors, radios, maps of the surrounding areas and communications equipment. In recognition of the neighbourly spirit that exists between the two communities, Hantsport has allowed Glooscap to use the centre if need be, particularly in the case of forest fires, which are the highest risk for the area. Community safety and emergency preparedness is a joint concern.

Conclusion

Hantsport and Glooscap were both struggling with how to provide clean water for their residents. The initial suggestion from Glooscap to address this issue jointly was the first step in addressing the communities' water issues and other concerns in a collaborative manner.

Regular communication between the two communities prevented issues from arising and served as a way to quell rumours and provide updates to community members. In addition, by providing tours of the facility, residents learned about water treatment and the benefits of the two communities working together.

In the words of Chief Shirley Clarke, Glooscap First Nation, “Water is vital to the future of our community growth and also for economic development within the community.”

Reference

Province of Nova Scotia, “Glooscap and Hantsport Co-operate on Water Project,” news release, September 16, 2004.



7. Tools: Service agreement templates

CIPP, in collaboration with Valkyrie Law Group, has developed a series of service agreement templates for the following services:

- Water and sewer
- Fire protection
- Solid waste
- Animal control
- Recreation
- Transit
- Comprehensive service agreements

These templates are meant to act as guides for organizing a service agreement and are not legal documents. Clauses will need to be altered, added and deleted to ensure that the agreement is best suited to fit the unique needs of your community. For example, the payment section of the template is only a suggestion; parties may wish to structure their payment for services differently based on the desired level of services and needs. To better understand the headings of these documents, use them with the service agreement provisions (please see **Unit 3, Chapter 2.2: Service agreement provisions**).

For more examples of service agreements, see the BC Civic Info website (www.civicinfo.bc.ca/13_show.asp?titleid=4). This website has a listing of service agreements across British Columbia and includes PDF links so that you may better understand the variety of service and payment structures.

Please see sample template in **Unit 3, Chapter 7.1: Template: Water and sewer service agreement**.

All CIPP Service Agreement Templates at fcm.ca.

7.1 Template: Water and Sewer Service Agreement

[Date]

WATER AND SEWER SERVICE AGREEMENT

This Agreement made this [day] of [month, year]

BETWEEN:

[NAME OF MUNICIPALITY]
[Address]

(hereinafter called the “Municipality”)

AND:

[NAME OF FIRST NATION]
[Address]

(hereinafter call the “First Nation”)

(collectively, the “Parties”)

WHEREAS:

- A. The First Nation’s Band Council has approved this Agreement by passing Band Council Resolution [Name of Resolution] at its meeting held on [Date] in accordance with the provisions of the *Indian Act*, R.S.C. 1985, c. I-5. A certificate of the Band Council Resolution is attached to this Municipal Type Service Agreement as Schedule [Name of Schedule].
- B. The Municipal Council has approved this Agreement by passing Bylaw No. [Number of Bylaw] at its meeting held on [Date]. A copy of the Bylaw is attached to this Agreement as Schedule [Name of Schedule].
- C. The [First Nation AND/OR Municipality] has constructed waterworks for the supply and distribution of domestic water and sewerage-works for the provision of domestic water and the collection and treatment of sewer, to properties in and around the [First Nation AND/OR Municipality].
- D. The said Parties deem it to their mutual interest to enter into this Agreement.

THEREFORE THIS AGREEMENT WITNESSES that in consideration of the mutual covenants and agreements herein contained the sufficiency of which is hereby acknowledged, the PARTIES hereto agree as follows:

1.0 DEFINITIONS

- 1.1 In this agreement, including this section, the recitals and schedules hereto, unless the context otherwise requires:

“Agreement” means this agreement, including the recitals and schedules hereto, as amended and supplemented from time to time.

“Leasehold Land” means any areas of the Reserve that are leased under the provisions of the *Indian Act*, RSC 1985, c. 1-5 to any non-Band members at any time during the Term.

“Leaseholder” means a tenant or occupier of leasehold land.

“Municipal Sewer System” means the Municipality’s system of sanitary sewer mains and sewage treatment facilities.

“Municipal Water System” means the Municipality’s system of water mains and pipes, pumps, and other facilities and equipment used to supply potable water.

“Municipal Services” means the municipal services of the Municipality that are described in section 2.1.

“Municipal Specifications” means the engineering and design standards as indicated by the Municipality.

“Point of Connection” means the point where the water system for either water or sewer owned by one party, is connected to the water system for either water or sewer, of the other party.

“Reserve” means the [*Name of First Nation*] which is a reserve within the meaning of the *Indian Act* R.S.C. 1985, c. 1-5.

“Reserve Sewer System” means the system of sanitary sewer mains and laterals constructed by the First Nation on the Reserve for the purpose of collection and conveying sanitary waste from the Reserve under the Agreement.

“Reserve Systems” means collectively, the Reserve Sewer System and the Reserve Water System.

“Reserve Water System” means the system of sanitary sewer mains and lateral supply pipes constructed by the First Nation on the Reserve for the provision of water services to the Reserve under the Agreement.

“Service” means a Municipal Service.

“Term” means a period of time which this Agreement remains in force and effect, as described in Section 2.



2.0 TERM

2.1 Subject to earlier termination under Section 2.2, 9.1, or 9.2 below, this Agreement commences on [Date of Agreement] and shall continue to [End date parties agree upon]. Subject to termination under Section 2.2 below.

2.2 This Agreement may be terminated on [Number of Months] months prior written notice by either Party, at their sole discretion.

2.3 Failure to renew or replace this Agreement or to provide earlier termination thereof, places the Parties in overholding status, and all agreements and obligations herein remain in effect on a month-to-month basis. Renewal is exercisable upon written notice to the municipality and subject to the First Nation's compliance with the Agreement.

3.0 SERVICES

During the Term, the District will provide the following Services to the Reserve:

- (a) a supply of water to the Reserve through the Reserve Water System;
- (b) the collection, conveyance, treatment and disposal of sanitary waste that is discharged from the Reserve through the Reserve Sewer System.

3.2 The First Nation must construct at its sole cost, and to the Municipality's satisfaction, any works required for the purpose of connecting:

- (a) the Reserve Water System to the Municipal Water System;
- (b) the Reserve Sewer System to the Municipal Sewer System;

whether such works are required to be constructed on or off the Reserve. Any required extension of or connection to Services on Municipality property or within a Municipality highway or right of way will become the property of the Municipality upon certification by the Municipality of the completion of such works to the standards required under this Agreement.

3.3 The quality and quantity of the Services to be provided by the Municipality under this Agreement will be substantially the same as the quality and quantity of Services provided by the Municipality to the users of such Services on non-Reserve lands within the Municipality. The Municipality is not obliged to provide Services at a greater level or degree than the level or degree to which the same Service is provided elsewhere within the Municipality. The Municipality makes no representation or warranty that the level or degree of Services provided under this Agreement will be maintained or continued to any particular standard, other than as stated expressly herein. The First Nation acknowledges and agrees that there may be from time to time interruptions or reductions in the level of Services, and that the Municipality will not be held liable for any losses, costs, damages, claims or expenses arising from or connected with a temporary interruption or reduction in the level of a Service provided under this Agreement.

4.0 PAYMENT FOR SERVICES

- 4.1 The First Nation will pay the Municipality for the supply of water under Section 3.1(a) of this Agreement:
 - (a) a fee equivalent to the rates established under [*Municipal by-law stating water rates/regulation*] in effect from time to time and as if each building within the Reserve were subject to that bylaw;
 - (b) an additional fee of [amount] dollars per annum for each building on the Reserve land.
- 4.2 The fee calculated under section 4.1(a) will be determined by the quantity of water used as determined by meters to be installed in locations that are approved in advance by the Municipality. The First Nation is responsible for the cost of purchasing and installing the meters to the Municipality's satisfaction in accordance with Municipal bylaws and standards. The Municipality is responsible for maintaining the meters.
- 4.3 The First Nation will pay the Municipality for the collection, treatment, and disposal of sanitary waste under Section 3.1(b) of this agreement:
- 4.4 No deduction from the established fees in Section 4.1 or 4.3 shall be allowed on account of any waste-water by the First Nation, the First Nation Members, or the Leaseholders or other occupiers of the reserve, or that results from a rupture, leak, breakdown, or malfunction of the Reserve Water System.
- 4.5 The Municipality will invoice the First Nation every [*frequency of water services billing*] for the supply of water and every [*frequency of sanitary sewer services billing*] for sanitary sewage, or on a more or less frequent basis as is the Municipality's practice.
- 4.6 The First Nation will pay the Municipality an annual fee of [amount] dollars for regular cleaning or flushing of the Reserve Sewer System and the Municipal Sewer System.
- 4.7 The First Nation shall, within [*number of days*] of the date upon which the agreement is executed, provide the Municipality with an irrevocable standby Letter of Credit drawn upon a Canadian Chartered bank in the amount of [*estimated cost of services for one year*] dollars to be used as security for payment of amounts owing to the Municipality pursuant to this. Any renewed or substituted Letter of Credit shall be delivered by the First Nation to the Municipality not less than [*number of days*] prior to the expiration of the then current Letter of Credit.

5.0 CONSTRUCTION OF NEW RESERVE SYSTEMS

- 5.1 Each Reserve System, including any extension of a Reserve System and any replacement of a Reserve System made necessary by accidental loss, wear and tear, breakdown, malfunction or obsolescence, must be constructed at the sole cost of the First Nation and must meet the specifications and standards of the Municipality as provided in [*name of bylaw which controls standards*].



- 5.2 The First Nation will retain a Professional Engineer to design and to provide engineering services for the construction of a Reserve System, which Engineer shall certify to the Municipality that such works have been constructed to Municipal Specifications. The Engineer's certification must be delivered to Municipality, along with all of the Engineer's inspection records and as-built drawings before any new Reserve System may be connected to the Municipal Water or Sewer Systems, respectively.

6.0 OWNERSHIP OF RESERVE SYSTEMS

- 6.1 The First Nation shall at all times retain ownership of the Reserve Systems, and no interest, right or title to the Reserve Systems shall be conveyed to the Municipality under this Agreement.
- 6.2 Except with the prior written consent of the First Nation, the Municipality will not utilize the Reserve Systems or establish any connection thereto, except for the purpose of providing Services under this Agreement.

7.0 REPAIRS AND MAINTENANCE

- 7.1 During the Term of the Agreement, the Municipality will provide all necessary repairs and maintenance of the Reserve Systems, including any preventative maintenance that the Municipality considers to be necessary. In the case of any newly constructed Reserve System, the Municipality's obligation under this section will commence following completion of the maintenance period provided under the contract for the construction of that system.
- 7.2 The Municipality will use reasonable efforts to carry out the repair and maintenance of the Reserve Systems in a timely manner and in accordance with the Municipality's infrastructure maintenance standards and policies.
- 7.3 Upon receipt of an invoice from the Municipality, the First Nation will reimburse the Municipality for all expenses incurred, whether for materials, equipment or labour, in relation to the repair and maintenance of the Reserve Systems.
- 7.4 The First Nation will promptly notify the Municipality of any breakdown in a Reserve System that requires any repair or maintenance work.

8.0 RIGHTS OF ACCESS

- 8.1 Representatives of the Municipality may at any time enter upon the Reserve for the purpose of providing any of the Services required in accordance with this Agreement as outlined by Section 3 or the purposes of inspecting the Reserve Systems and ensuring compliance with the terms of the Agreement.
- 8.2 The First Nation may apply to have access to Municipality's highways or rights-of-way for the purpose of constructing any works or services required under this Agreement, in accordance with the procedures established under [*name of any applicable bylaws, if required*].

9.0 TERMINATION FOR BREACH OF AGREEMENT

- 9.1 Whether or not the Services or any of them are discontinued or any disconnections are made, where invoices remain unpaid by the First Nation as at [Date] of the following year, the Municipality shall have the right, without prejudice to any other right or remedy, to call upon the Letter of Credit as outlined in section 4.7. If, at any time during the term of this Agreement invoices remain unpaid as at [Date] and the First Nation fails to have the Letter of Credit in place, the Municipality may give immediate notice of termination of this Agreement.
- 9.2 Should either party be in breach of its covenants or undertakings under this Service Agreement, other than a failure by the First Nation to pay for Services, which remains un-rectified for a period of [acceptable period for rectification of breaches of the agreement] following written notification of such breach, the party not in breach may, at its option and without prejudice to any other rights or remedies it might have, immediately terminate this Agreement.

10.0 LIABILITY

- 10.1 The Municipality does not warrant or guarantee the continuance or quality of any of the services provided under this Agreement and shall not be liable for any damages, expenses, or losses occurring by reason of suspension or discontinuance of the Services for any reason which is beyond the reasonable control of the Municipality, including without limitation acts of God, forces of nature, soil erosion, landslides, lightning, washouts, floods, storms, serious accidental damage, strikes or lockouts, vandalism, negligence in the design and supervision or construction of the Reserve Systems, or in the manufacture of any materials used therein, and other similar circumstances.

11.0 COMMUNICATIONS AND CONTRACT PROTOCOL

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

12.0 DISPUTE RESOLUTION

- 12.1 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. The Parties acknowledge and agree that this Section 12.1 does not limit either Party's respective rights under Section 9.1 or 9.2 above.
- 12.2 In the event that the parties fail to resolve matters, the parties shall seek a settlement of the conflict by utilizing [Outline agreed upon method(s) of dispute resolution], and recourse to the Courts shall be a means of last resort, except when public health or safety is concerned.



13.0 ACKNOWLEDGEMENT OF RIGHTS

- 13.1 Nothing contained in this Agreement will be deemed to limit or affect any other Aboriginal rights or claims the First Nation may have at law or in equity. Nothing contained in this Agreement will be deemed to limit or affect the legal rights, duties of obligations of the Municipality. The Parties agree that nothing in this Agreement will affect the cooperation or consultation covenants the Parties have entered into pursuant to other Agreements.

14.0 HEADINGS

- 14.1 Headings that precede sections are provided for the convenience of the reader only and shall not be used in constructing or interpreting the terms of this Agreement.

15.0 ENTIRE AGREEMENT

- 15.1 This Agreement constitutes the entire Agreement between the Parties and there are no undertakings, representations or promises express or implied, other than those expressly set out in this Agreement.
- 15.2 This Agreement supersedes, merges, and cancels any and all pre-existing agreements and understandings in the course of negotiations between the Parties.

16.0 NOTICE

- 16.1 The address for delivery of any notice or other written communication required or permitted to be given in accordance with this Agreement, including any notice advising the other Party of any change of address, shall be as follows:
- (a) to Municipality:
[Provide Address including the attention the letter should be directed to and other relevant contact information]
 - (b) to First Nation:
[Provide Address including the attention the letter should be directed to and other relevant contact information]
- 16.2 Any notice mailed shall be deemed to have been received on the fifth (5th) business day following the date of mailing. By notice faxed or emailed will be deemed to have been received on the first (1st) business day following the date of transmission. For the purposes of Section 16.2, the term “business day” shall mean Monday to Friday, inclusive of each week, excluding days which are statutory holidays in the Province of *[insert name of province]*.
- 16.3 The Parties may change their address for delivery of any notice or other written communication in accordance with section 16.1.

17.0 SEVERANCE

- 17.1 In the event that any provision of the Agreement should be found to be invalid, the provision shall be severed and the Agreement read without reference to that provision.
- 17.2 Where any provision of the Agreement has been severed in accordance with Section 17.1 and that severance materially affects the implementation of this Agreement, the parties agree to meet to resolve any issues that may arise as a result of that severance and to amend this Agreement accordingly.

18.0 AMENDMENT

- 18.1 The Agreement shall not be varied or amended except by written agreement of both Parties.
- 18.2 No waiver of the terms, conditions, warranties, covenants, and agreements set out herein shall be of any force and effect unless the same is reduced to writing and executed by all parties hereto and no waiver of any of the provisions of this Agreement will constitute a waiver of any other provision (whether or not similar) and no waiver will constitute a continuing waiver unless otherwise expressly provided.

19.0 GOVERNING LAWS

- 19.1 The provisions of this Agreement will be governed and interpreted in accordance with the laws of [insert province] or Canada, as applicable.

20.0 ASSIGNMENT

- 20.1 The rights and obligations of the Parties may not be assigned or otherwise transferred. An amalgamation by a Party does not constitute an assignment.

21.0 ENUREMENT

- 21.1 The Agreement enures to the benefit and is binding upon the Parties and their respective heirs, executors, administrators, successors, and assigns.



IN WITNESS WHEREOF the parties hereto have executed this Agreement.

On behalf of the *[NAME OF FIRST NATION OR MUNICIPALITY]*

[Position]

[Position]

On behalf of the *[NAME OF FIRST NATION OR MUNICIPALITY]*

[Position]

[Position]



8. Service agreement and pricing references

Towards Sound Government to Government Relationships with First Nations:

A Proposed Analytical Tool

Institute on Governance

This tool is designed to help governments evaluate the quality of their relationship with First Nations. It provides key principles for engagement and good governance that play into the relationships between governments and the quality of outcomes produced by those relationships.

Cost Sharing Works: An Examination of Cooperative Inter-Municipal Financing

Alberta Association of Municipal Districts and Counties (AAMDC)

This paper offers a summary of cost sharing between municipalities including: benefits, disadvantages, and principals of cost sharing. Although this paper is intended for a municipal audience, it could also be used in the context of First Nations–municipal cost sharing.

Report Concerning Relations between Local Governments and First Nations

Alberta Municipal Affairs

This report discusses the necessary principles for creating and maintaining positive relationships between First Nations and Municipalities by drawing on interviews and case studies from the Prairies, West Coast, Yukon and Ontario.

A Reference Manual for Municipal Developments and Service Agreements

Manitoba Department of Intergovernmental Affairs

A complete reference guide to Service Agreements aimed at First Nations and municipalities in Manitoba. It covers topics such as organizing meetings, building compatible bylaws, sample payment arrangements, and general terms that should be present in an agreement. Throughout the report, provincial laws are referenced (how they affect municipal plans, etc.).

**Handbook on Inter-Municipal Partnerships and Co-operation for Municipal Government**

Union of Nova Scotia Municipalities, Ministry of Municipal Relations, Service Nova Scotia

This handbook was written with the purpose of helping municipalities work more effectively with one another. Many of the lessons and observations in this handbook can be easily applied to the First Nation–municipal context. It contains useful information on negotiations and working together, tips to help evaluate an inter-municipal partnership, and an extensive guide to best practices resources.

Towards a Model Local Government Service Agreement with Lower Mainland First Nations

Lower Mainland Treaty Advisory Committee

This paper addresses a wide variety of concerns relating to service agreements including financial, technical and operational consideration; land-use compliance; service levels; local, community and regional interests; rights-of-way, taxation; and future expansion of regional facilities. It also emphasizes the fact that successful contracts often begin with relationship-building initiatives. Only then can service agreement be negotiated.

The background features a light purple wavy line pattern at the top. Below this is a large yellow-green rectangular area with a wavy line pattern. To the left of this area is a dark teal vertical band. At the bottom, there is a dark teal area with a wavy line pattern and a large, realistic water ripple effect on the left side. A thin white vertical bar is located at the bottom left of the teal band.

Unit 4

Resources and Other Considerations

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1. Considerations for optimal service agreements

Several elements can help add value and enhance any agreement on community infrastructure between First Nations and municipalities. The following best practices will assist both parties in obtaining the most out of their partnership and will ensure additional benefits for each community and region.

1.1 Regional water commissions

Water service agreements are only one type of partnership possible between municipalities and First Nations. Other options exist for joint water systems, such as regional water commissions. Regional water commissions are corporate water entities for joint ownership of water infrastructure.

This chapter has adapted much of its content from the *Governance Options for Municipal Regional Services of Alberta* brochure, which explains the basic features of a regional water commission, including the ministerial approval process required in a number of provinces. This information is a general guide and may not apply to all provinces. Please consult your provincial municipal affairs office and a lawyer for procedures and legal advice specific to your region and circumstance.

History of regional water commissions in Canada

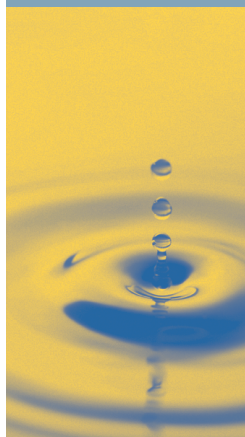
In the 1980s, regional water commissions were written into many provincial Municipal Acts, leading to their increase in use particularly in Western Canada. This was especially

the case in smaller and more rural communities which were struggling with water quality or lacking capacity and funding to operate their own water systems. Regional service commissions were legislated by a number of provincial governments to enable particularly smaller communities an opportunity to own and operate their own water system with neighbouring communities providing a higher standard of water quality, operational standards, and economies of scale.

In recent years, some provincial governments have encouraged the development of more regional systems through increasing grant and loan funding to communities.

Characteristics of regional water commission

A regional water commission is a legal entity made up of a combination of partners: municipalities, First Nations, Métis settlements or armed forces bases. Regional water commissions are responsible for owning and operating the regional water system of their members. Members do not need to be directly adjacent to each other to form a commission.



Since regional water commissions are a separate legal entity, they have the power to hire staff, perform their own administrative tasks, own property in their own name and raise capital. They can hire staff from the municipality or First Nation or contract work out to an outside party. Most regional water commissions meet three or four times a year.

Regional water commissions do not provide water services for profit, and any financial surplus must be used to reduce costs for water services. Surplus funds may not be distributed back to the commission members.

Structure

Membership criteria for regional water commissions have been established by provincial legislation. Provincial legislation states that only elected officials from the member communities may sit on a regional water commission as voting members. A director of the commission is designated from among its members.

Bylaws are then set up to establish the membership structure and other operating guidelines. Factors to consider when structuring your commission include the funding contributions of each community and the number of communities being represented. A board with a large number of communities may want to divide representation by regional zones rather than individual communities.

When making decisions, usually each representative on the commission qualifies as one vote. Most regional water commissions are set up with an odd number of representatives from each community to avoid “deadlock” or split votes (e.g., four votes against four). Commissions may also choose to make decisions on a consensus basis; they have the authority to set their own operating procedures, including decision-making style.

Benefits of regional water commission

Many communities have opted to form a regional water commission in order to provide water services to their residents. A water commission has numerous benefits not limited to the following:

- **Economies of scale:** Small and rural communities face the challenge of providing services to their residents due to small and dispersed populations. When a number of small communities can work together to provide services for their populations, economies of scale can be achieved making capital-intensive services, such as water, more financially feasible.
- **Leveraging opportunities:** Since building, operating, and maintaining a regional water system requires significant capital, some municipalities and First Nations choose to establish a regional water commission to become eligible for provincial grants and loans.
- **Local participation:** A regional water commission provides all communities involved a chance to be a part of the decision-making process for local services. Employment opportunities and other spinoff benefits can be shared between all participating communities.

Challenges of regional water commissions

Regional water commissions by nature come with a number of challenges that communities should keep in mind:

- Each member community will have different water needs for its community, so determining a water treatment capacity and flow capacity may take significant research and negotiation among commission members.
- Municipal and First Nations governments may have different ways of working and dealing with issues. It may take time, patience and a solid understanding of how the other party operates before consensus may be reached.

Ministerial approval process

Provincial governments must approve the establishment of regional water commissions. In some provinces provision of services outside the boundaries of the regional water commission requires approval of the minister and the municipal authority within whose boundaries the services are to be provided.

Proposed regional service commissions should develop a business plan demonstrating their capacity for sustainability, as municipal affairs departments often require such a plan. Specialty engineering firms can help calculate costs and determine budgets.

Business plans should consider the following:

- List of assets and liabilities associated with the regional water commission both existing and proposed for the first five years of operation
- Five-year operating and capital budgets outlining estimated revenues and expenses
- Full cost-recovery rate model
- Proposed water rates to be charged and established with bylaws
- Proposed long-term debt over the first five years of operation, any interim borrowing requirements during the start-up and construction phase, and the debt limit amount requested
- Cash flow projections for the first five years of operations.

Other Considerations

Municipal and First Nations governments must consider many factors before deciding on a water governance structure that suits their needs. A few questions to consider are as follows:

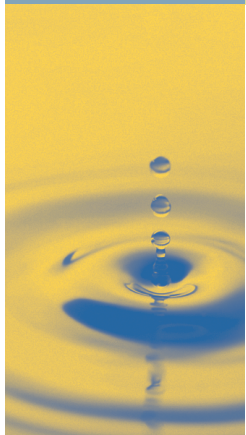
- Should the water service operate at arm's length from the municipality and First Nation?
- Will water services be provided as a business?
- Does the service provider need to borrow funds?
- Does the water service provider need to own land and property?

This chapter provides basic information about the establishment of regional water boards. Communities will have to work closely together with the province and Aboriginal Affairs and Northern Development Canada (AANDC) where necessary, as the exact process will vary from province to province.

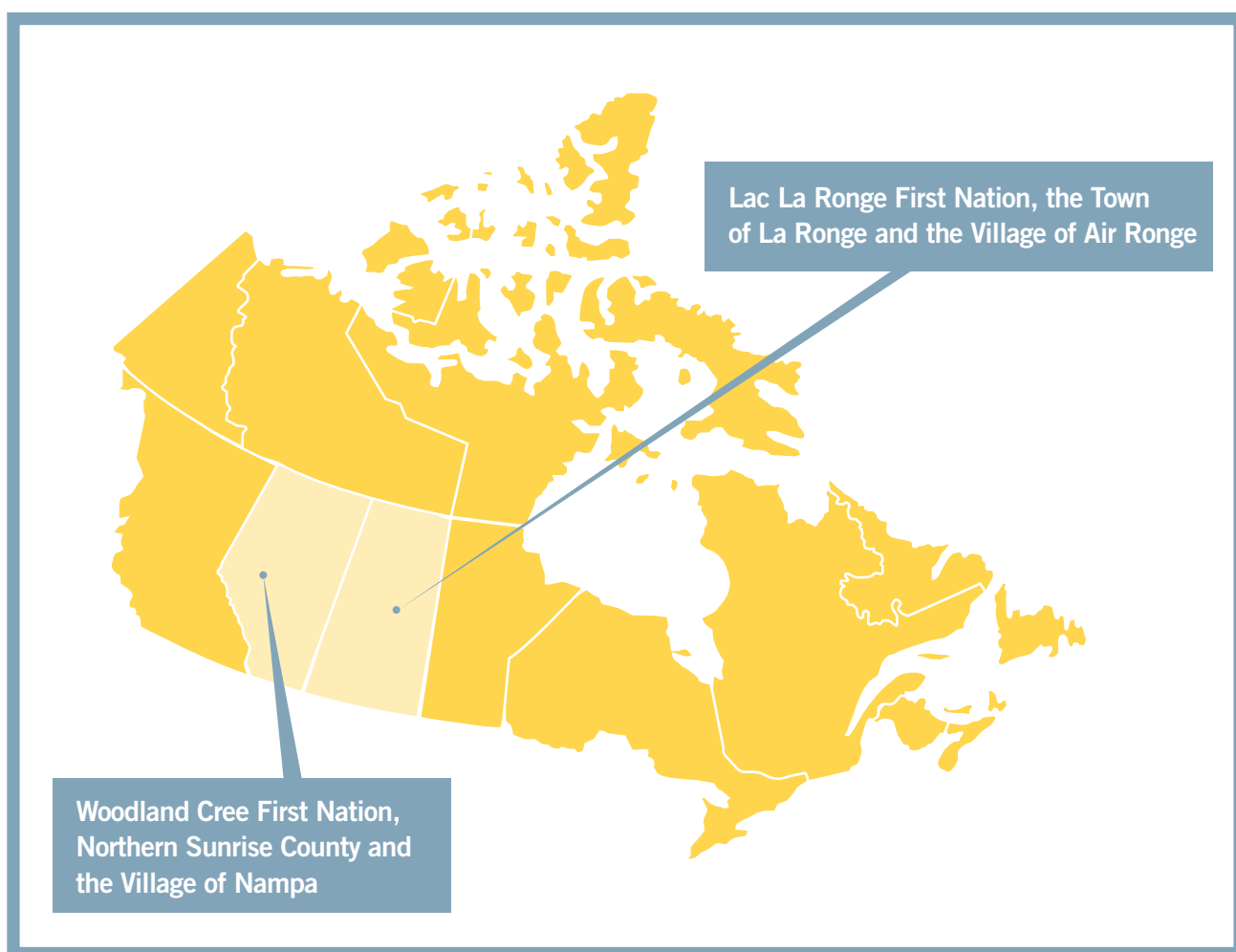
1.2 Water governance references

Governance Options for Municipal Regional Services of Alberta *Government of Alberta*

This brochure lists governance options available to municipalities considering regional services delivery. A comparison outlining basic differences between governance structures for municipal services in Alberta is included.



Regional Water Case Studies



Case Study



1.3 Woodland Cree First Nation, Northern Sunrise County and the Village of Nampa (AB)

Location:

Peace River region of northwestern Alberta

Populations:

Northern Sunrise County: 2,880

Village of Nampa: 373

Woodland Cree First Nation: 986

Cost-sharing projects:

Water treatment plant (New Water Ltd.), wastewater, fire protection, family and community support services, seniors' transportation program and a recreational facility

Capital costs:

Phase one: \$46 million (the three communities contributed \$12 million in total)

Other funding:

\$34 million from various grants including \$4 million from AANDC and \$30 million from the Province of Alberta

Keys to success:

Grant funding

Communities may want to consider applying for government and other grant programs to subsidize infrastructure projects.

Striking the right balance in committees

When establishing a committee to oversee the process of developing a new entity, ensure that all relevant parties (communities, private sector, provincial and federal governments) are at the table. Also ensure that committee members have a variety of skills and backgrounds.

Spirit of cooperation and regular communication

Maintaining a spirit of cooperation and commitment between parties makes for successful long-term working relationships. Regular communication ensures that problems are dealt with early and solutions benefit all communities involved.

Lessons learned:

Innovative Problem Solving

When problems arise, identify each party's needs, think "outside the box" and focus on finding solutions together.

Contacts:

Bob Miles, CAO

Northern Sunrise County

ramiles@northernsunrise.net

Tel.: 780-624-0013

Alma Cardinal, Manager

Woodland Cree First Nation

alma@woodlandcree.net

Tel.: 780-629-3803

Background

Poor water quality and unreliable water sources were the drivers that brought together three communities in the Peace River region of Alberta: Northern Sunrise County, the Village of Nampa and Woodland Cree First Nation. These communities were seeking a stable source of potable water for their residents and were striving to meet the future needs of their region in a sustainable manner.

In 2006, a Water System Feasibility study recommended building a new water treatment plant to replace the two existing outdated plants in Cadotte Lake and the Village of Nampa that served all three communities.

Process for the Water Treatment Plant

With such a large undertaking and financial investment, the communities began to collaborate to apply for grants from the federal and provincial governments and other potential funders.

A technical committee was established to develop design plans for the new water treatment plant. To ensure the process ran smoothly, each community nominated two representatives to attend all technical meetings and any other related meetings. Representatives included CAOs, Chief and band council members and experts in the areas of economic development and engineering. In addition, the technical committee required the regular attendance of consultants and representatives from Alberta Transportation, Alberta Environment, AANDC and Shell Canada. The contributions of committee members with a variety of different skills and backgrounds provided a solid foundation for covering all aspects of this complex and lengthy process.

Results

After four years of hard work and dedication, New Water Ltd., a state-of-the-art water treatment plant, became a reality. New Water Ltd. is jointly owned by Northern Sunrise County (62% ownership), Woodland Cree First Nation (25% ownership) and the Village of Nampa (13% ownership). Northern Sunrise County and Woodland Cree Nation have been the primary administrative entities throughout the process while Northern Sunrise County employees handle the daily operations of the facility.

The capital cost for the first phase of development was \$46 million. Together, the communities contributed \$12 million and the rest of the funds came from various grant sources including \$4 million from AANDC, and \$3 million from the Province of Alberta.

New Water Ltd. is the first plant in the Northern Alberta region to exceed current industry practices in the areas of sustainable development, environmental efficiency, and energy efficiency making it a candidate for LEED Silver certification. Energy measures are expected to achieve a 45% reduction in energy consumption and the building was constructed with solar preheating for ventilation air and a heat recovery ventilation system. The building draws water from the Peace River through the Low Lift Pump house and Shell Canada's intake. Efforts were made to reuse Shell Canada's pipeline and to build with recycled construction materials.

The second phase of development will involve extending the current pipeline an additional 40 kilometers. When the new water system is completed it will include a raw transmission line, desilting pond, raw water reservoir and regional transmission line system.

Challenges

New Water Ltd. would not have come to fruition if these communities had not sought grant funding. Grant funding can be competitive and it is usually based on meeting specific criteria in order to qualify. Communities with low populations can run the risk of being seen as a lower funding priority. The grant funding applications prepared by the communities included research explaining their need to have a stable, high-quality water supply that meets long-range sustainability practices on a regional basis.

A project of this magnitude requires a significant commitment of time, significant commitment to communicate and significant amount of research on the part of all participants. Regular meetings and consultation — among all three communities, government bodies, Shell Canada, consultants and numerous contractors — at all stages of the project helped make New Water Ltd. a reality. Regular communication enabled the parties to identify problems early and respond with solutions that would benefit the three communities. The process allowed them to think “outside the box” and work in a spirit of cooperation. These communities also committed to meeting deadlines and ensuring that their technical work was of high quality.

Working with municipalities and First Nations often involves different administrative processes. Whether this involves band council resolutions or municipal council motions and approvals, working together requires a great deal of continued coordination and communication between the communities.

Additional partnerships

The communities have had positive, ongoing relationships over the years and have entered into some other service agreements with one another. The Village of Nampa and Northern Sunrise County have a fire protection mutual aid agreement. These communities also partner for Family and Community Support Services, a seniors’ transportation program, and a recreational facility in the Village of Nampa.

The Northern Sunrise County provides Woodland Cree First Nation with both wastewater services and fire protection services on an informal basis. These communities are also developing a joint economic development strategy and a mutual aid agreement for fire protection.

Conclusion

This case study is a positive example of collaboration and cooperation between communities to solve water concerns. The communities have established sustainable and energy efficient practices that will provide long-term environmental and economic benefits. This study also demonstrates how smaller communities with limited resources worked together on a regional basis to secure grant funding to realize their goals.

References

Northern Sunrise County, Woodland Cree First Nation and Village of Nampa. (2010). *New water Ltd. Regional Water System: Official Opening October 1, 2010* [Brochure]. Peace River, AB: Author.

Northern Sunrise County. (2011). *New water Ltd. Overview*. Retrieved February 11, 2011 from http://www.northernsunrise.net/index.php?option=com_content&view=section&layout=blog&id=6&Itemid=73

Heat-Recovery Ventilation

Heat-recovery ventilation systems allow buildings to maintain high indoor air quality without excessive additional energy costs.

A heat-recovery ventilator (HRV) consists of two separate air-handling systems: one collects and exhausts stale indoor air while the other draws in outdoor air and distributes it throughout the building.

At the core of an HRV is the heat-transfer module. Both the exhaust and outdoor air streams pass through the module, and the heat from the exhaust air is used to preheat the outdoor air stream. Only the heat is transferred; the two air streams remain physically separate. Typically, an HRV is able to recover 70 to 80 per cent of the heat from the exhaust air and transfer it to the incoming air. This dramatically reduces the energy needed to heat outdoor air to a comfortable temperature.

(Adapted from Natural Resources Canada's web page: <http://www.oeo.nrcan.gc.ca/residential/personal/new-homes/r-2000/standard/how-hrv-works.cfm>)

Case Study



1.4 Lac La Ronge First Nation, the Town of La Ronge and the Village of Air Ronge (SK)

Location:

West shore of Lac La Ronge, a glacial lake about 250 km north of Prince Albert in Northern Saskatchewan

Population:

Lac La Ronge Indian Band: 8,954

Town of La Ronge: 2,725

Village of Air Ronge: 1,032

Cost-sharing projects:

Waste management with landfill and recycling program, regional fire hall and regional water corporation (including water treatment plant)

Project cost:

\$12.14 million for the water treatment plant

Additional partners:

Northern Revenue Sharing Trust Account (Province of Saskatchewan), SaskWater; Western Economic Diversification Canada, Infrastructure Canada, Indian and Northern Affairs Canada (now AANDC) and Associated Engineering.

Keys to success:

Trusting relationship

An established relationship based on trust and regular communication can avoid some of the challenges involved in setting up new entities.

Consider future needs and requirements

When considering options for future water needs, ensure that you consider current and anticipated regulatory requirements and future water demands.

Lessons learned:

Relationships take time

It can take time to establish a solid, trusting relationship with neighbouring communities. Historically, the three communities went through growing pains to establish the formal and informal structures necessary to deliver joint community services.

Cooperation across all levels

Establishing a complex entity such as a regional water corporation requires cooperation from all levels of leadership — from project management to implementation staff.

Consider regional water solutions

If water solutions for a small community are being explored, the most viable solution could be a regional solution involving neighbouring communities.

Contacts:

Dave Zarazun, Administrator
Town of La Ronge
Laronge.administrator@sasktel.net
Tel.: 306-425-3056

Glen Gillis, Manager,
Northern Engineering, SaskWater
Glen.gillis@saskwater.com
Tel.: 306-953-2262

Background

Lac La Ronge is a glacial lake located on the edge of the Canadian Shield in Northern Saskatchewan, approximately 250 kilometres north of Prince Albert. The Lac La Ronge Indian Band (the band), the Town of La Ronge (the town) and the Village of Air Ronge (the village) are on the west shore.

The band, town and village have worked collaboratively to meet joint needs in a variety of sectors including waste management with a landfill and recycling program, a regional fire hall, and a regional water corporation.

This case study will focus primarily on the development of the regional water corporation.

Process for water service agreements

For many years, the town, village, and band in Northern Saskatchewan experienced problems with their respective water systems: inadequate capacity, aging infrastructure, and difficulties in meeting new water quality regulations. At the time, the town and village had their own water treatment plants, and the band received water from the village but managed its own distribution system.

While the town and village were assessing their existing systems, the band retained the services of an engineering firm (Associated Engineering) to explore options for establishing a water treatment plant in their community.

None of these approaches were leading to viable options as one of the major obstacles was access to sufficient capital to build and/or retrofit the existing systems on an individual basis. Preliminary research indicated that establishing a regional water system to supply high-quality potable water would likely be the most cost-effective way to meet existing and longer-term growth projections

for the communities. With a mutual understanding of their collective shared needs for a sustainable and high-quality water supply, and recognizing the economic benefits of working cooperatively to meet the increasingly stringent drinking water quality requirements for their growing region, the three communities began discussing options for collaborative solutions to meet their respective water needs. Discussions expanded to include Associated Engineering, SaskWater (the provincial crown water utility) and AANDC.

A water committee was established with representation from all three communities. Associated Engineering was retained to develop the conceptual design and construction of a regional water supply and distribution system. SaskWater was asked to examine different operational and management scenarios and to analyze financing options and requirements for raising capital. Any solutions to be presented were required to meet current and anticipated regulatory requirements and future water demands for the communities.

The report written by SaskWater and Associated Engineering revealed that having one treatment plan was the most financially viable solution. Estimated at \$12.14 million, the proposed system would involve

- combining the existing water systems
- upgrading and expanding the La Ronge Water Treatment Plant and raw water intake
- constructing new connection feeder mains
- converting the village's water treatment plant to a water distribution plant,
- modifying the band's water distribution system and additional pipeline construction

Based on the most economically feasible options, a formula was presented for cost sharing the project. This included a cost analysis considering capital requirements on a per capita level, the value of existing assets, population growth rates of the different communities, and an expected 20-year lifespan for the plant.

All parties involved looked at the report and were satisfied that it met their needs but were concerned about the high implementation and operation costs. The assessments showed, however, that while the initial capital outlays would be high, the operational costs would progressively lessen over time.

The new water treatment and distribution system would upgrade the communities' water treatment facilities to address their water quality and capacity concerns and meet the regulatory requirements for water quality and waterworks operations. Implementation of the system would result in the largest service population (10,000) for a water system in northern Saskatchewan or on a Saskatchewan First Nation.

Administrative management

The leadership in all three communities worked to design the administrative structures needed to operate a regional water system. They fostered a cooperative approach that encouraged the communities to work together to develop the regional system with an eye to the long-term benefits for water quality, sustainability and economic development opportunities.

The Mayors and Chief signed an agreement to organize and set up an interim board with two representatives from each community and one representative to be elected at large by the board. This was the first example in Saskatchewan of a First Nations community serving as a shareholder in a nascent utility corporation. The governance structures for

the interim board were created using templates of similar boards elsewhere in the province. The village provided administrative support for the board and pending corporation.

Eventually a lawyer was retained and the Lac La Ronge Regional Water Corporation was established and provincially incorporated.

Provisions for contribution agreements between all three communities were established and the interim board began to pursue funding. SaskWater continued work on the Lac La Ronge Regional Water Corporation–Water Supply System, acting as project manager on behalf of the three communities.

All partners have donated services, time and financing to help establish the corporation, test water treatment processes and conduct studies. The goal was to set up the permanent board with a sustainable budget based in part on a cost-recovery model.

Results

Financing to build this system required negotiations with different orders of government and with various entities. Through discussions, support was provided by the band, the town and the village along with the provincial and federal governments. The province provided financial support through the Northern Revenue Sharing Trust Account and the federal government provided support through Infrastructure Canada, AANDC and Western Economic Diversification Canada.

The Lac La Ronge Regional Water Corporation retained Associated Engineering to complete the preliminary and detailed design, tendering and construction engineering services to upgrade the raw water intake, expand and upgrade the water treatment plant, construct a new regional pipeline and

convert the Air Ronge plant to a pump station. Preliminary designs began in 2007 and by 2009 the pipelines were completed. The intake screens for the treatment plant were installed in May 2010. Design and tendering of the treatment plant was completed in summer 2009.

Challenges

The challenges in setting up the regional water corporation were few due to the solid existing relationships between the band, the village and the town. The other key factor that helped prevent challenges was the thoroughness of the report and the technical and operational options generated by Associated Engineering and SaskWater for the water treatment plan.

Three principal issues arose related to procedural and administrative concerns and employment priorities.

1) Municipal determination of the Lac La Ronge Regional Water Corporation

GST/HST is applied to most suppliers of property and services. While municipalities are required to pay these taxes, they are entitled to a municipal rebate from the government at a rate of 100% of the GST and the federal part of the HST.

However, before they can submit claims for the rebate, they need to be registered and municipally designated. Municipalities often create autonomous boards, commissions and other local bodies to carry out specific municipal activities and provide services; these entities may also qualify for the rebates. Rebates are also permitted in instances where the corporation is owned by First Nations or tribal council as long as it provides exempt municipal services such as fire and police protection, water distribution, sewerage, drainage systems, library services, etc.

The Lac La Ronge Regional Water Corporation has experienced some administrative hurdles in providing the municipal designation given that the corporation is a tripartite formation that includes First Nations. This has impacts on the GST rebates the corporation is potentially entitled to, which can be quite significant when factoring in construction, capital costs and anticipated operational and maintenance costs.

The band has been working with authorities to receive a municipal designation for its involvement in the water corporation, which will allow the corporation as a whole to be entitled to the GST rebates.

2) Jurisdictional concerns for land ownership

The new water treatment plant is located in a community park on the town's waterfront. The town bylaws require public consultation when land is sold or leased. There was also a need to distinguish between and determine ownership of the land and ownership of the facility.

It was agreed that the town retains the right to the land. Therefore, if the water treatment plant is ever moved, the land as an asset is designated solely to the town. The water treatment plant as a facility, however, is under the control of the corporation.

To account for any unanticipated changes in the future, the agreement contains options for revisionary clauses for joint access and provincial clauses to ease maintenance of the land.

3) Employment

All three jurisdictions had some water infrastructure on their lands. Once the issue of the location for the treatment plant was settled, the parties discussed ways to ensure access to employment opportunities arising from the formation

of the water corporation and for the operation of the new plants. In addition, they decided that there was to be no loss of employment arising from realignments of the existing distribution facilities and infrastructure. They agreed that local citizens would have first right of access to employment. When SaskWater was awarded the contract to operate the plant, it provided a capacity-building program to train community members should they desire to work for the corporation.

Relationship building

Historically, the three communities have gone through growing pains as they have developed the formal and informal structures necessary to deliver joint community service.

The magnitude of work involved to make the regional water corporation a reality was significant. It required cooperation from all levels starting with the leadership and including project management and implementation staff.

In moving forward with the development of the regional water corporation, all three communities benefited from existing close working relationships where the leadership was closely involved. The key stakeholders had representatives who were respected and trusted by all parties. In addition, a transparent and open process was used to share information and exchange candid views on priorities and concerns.

The regional water corporation was built on a solid foundation of cooperation and respect. As a result, the deliberations were more of a technical nature, which required external experts. The operational and project management staff who provided technical advice were individuals already working in the area and were known and trusted by all involved parties.

Additional partnerships

In 2004, the Lac La Ronge Regional Waste Authority (later called the Lac La Ronge Regional Waste Management Corporation) was created to handle the consolidation of municipal solid waste management for the town, the village, and the band and for a number of small nearby communities represented by the Northern Saskatchewan Administration District (NSAD).

In 2007, a tri-community partnership comprising the band, town and village signed a formal memorandum of understanding to establish and manage a regional fire hall. The fire hall has an official governing body to which each of the three communities appoints members. All communities contribute to the operational costs on a per capita basis.

According to former Mayor Joe Hordyski, who served on the La Ronge Town Council for 18 years — 12 of them as Mayor — the forging of partnerships between the three communities was among the most rewarding experiences during his time in public service. In an interview with the *La Ronge Northerner* (a community newspaper) he said, “In my view the relationship that we built between the three communities is more than just cost sharing; it’s beyond that. We’ve built a trust and being able to help each other out ... it’s a mutual relationship.”

Conclusion

The success of the development of the regional water corporation can be attributed to the following factors:

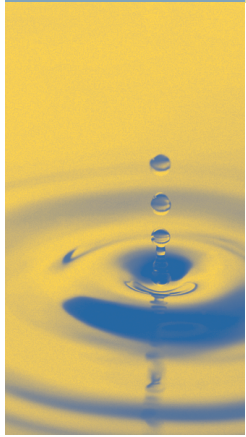
- a solid trusting relationship between all three communities;
- involvement across all levels of the administrations, from elected officials to senior management to line staff; and
- participation in terms of financing, time and services from all key partners including the communities, the private sector and provincial and federal governments.

Waste management snapshot

Waste disposal in many small northern communities presents a challenge. Establishing properly run and regulated landfills in accordance with provincial standards can be financially prohibitive for a small community. Many smaller communities meet this challenge by working together through regional waste management arrangements that are more cost effective and meet provincial standards.

In 2004, the Lac La Ronge Regional Waste Authority (later called the Lac La Ronge Regional Waste Management Corporation) was created to handle the consolidation of municipal solid waste management for the Town of La Ronge, the Village of Air Ronge, the Lac La Ronge Indian Band and a number of small nearby communities represented by the Northern Saskatchewan Administration District (NSAD). The Corporation serves communities within a 40-kilometre radius of the Town of La Ronge. Existing landfills were closed and with the use of transfer stations, each community now hauls its waste to a central landfill established in the Town of La Ronge.

The Corporation is the first regional waste authority to have been established in northern Saskatchewan. Provincial support was provided to purchase collection and recycling equipment and for landfill development. The Town of La Ronge provides accounting services for the Corporation. Service fees for the operations of the Corporation are calculated using a cost-sharing formula on a per capita basis.



2. Joint community planning

Joint community planning allows communities to establish a vision for their region in the long term and then plan and implement the projects that would help them to achieve this vision. Plans may involve projects in several different sectors of the community (e.g., health, environment, natural resources, economic development, infrastructure and social well-being), but projects are working toward a common objective. Ideally, planning would not simply take place in the political or administrative bodies of a community. It would work at the grassroots level to ensure that all residents can feel that they are a part of the decision-making processes and are participating in achieving change.

Advantages of joint community planning include the following:

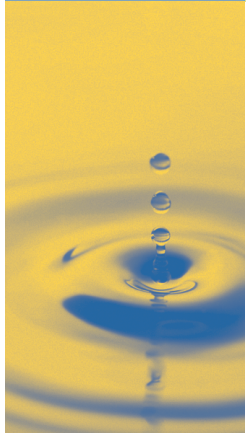
- Empowers communities to begin to work together and respond to change and regional needs together in an effective and comprehensive manner
- Prevents duplication of efforts between communities and streamlines approaches
- Builds capacities between governments to work together and find synergies
- Helps coordinate land use, community needs, and future developmental demands, all of which can be tackled together
- Ensures that natural environments that are important to both communities can be protected (i.e., source water protection)
- Helps identify areas for future collaboration such as economic development
- Promotes reconciliation and the recognition of common values and goals

2.1 Sustainability planning

Sustainability planning is a type of community plan that sets out a long-term vision for your community. It considers social well-being, economic development and environmental sustainability. By engaging in a sustainable community plan, you are creating an impetus for policy change and public engagement. Although local governments are usually the ones to push-start initiatives, sustainability is more than a local concern. Therefore it can be mutually beneficial to plan with your neighbour and share ideas about your community's objectives and how you can reach your sustainability goals jointly.

There are several key points to consider when thinking about sustainability planning:

- Sustainability planning means thinking long term, but creating action plans for the short, medium and long terms.



- Sustainability planning must be easy to understand and implement.
 - Community sustainability plans are working documents that need to be monitored and adjusted over time to meet your community's needs.
 - Sustainability must take into consideration many facets of the community, including the community's social and economic well-being.
 - Sustainability planning means being engaged with your community and other local governments — having everyone on board early will allow you to have the most effective plan possible.
- There are plenty of resources available to help establish community and sustainability planning. Please see **Unit 4, Chapter 4: Best practices references and CIPP Guide to Joint Community and Sustainability Planning**.

3. Source water protection

The provision of safe drinking water is a universal goal. In Canada, although municipalities do not have constitutionally defined authority over water, they have acquired responsibility under provincial statutes to supply water to users.

As such, municipalities are faced with the challenge of being the frontline providers of drinking water systems, maintenance and monitoring in the majority of Canadian communities. The primary method for meeting these requirements is shaped by their respective provincial legislative and regulatory frameworks, which vary across Canada. For First Nations reserve communities, the protection and provision of water to First Nations is a responsibility of the federal government, coordinated through AANDC. A disparity in access to clean, safe drinking water between First Nations and non-First Nations communities is well documented in Canada. Post-Walkerton, water quality issues across Canada concern many people, and the protection of safe

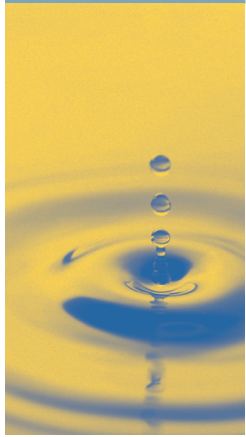
community water sources is of paramount interest, both on reserves and in non-First Nations communities.

3.1 Best practices in working together

The development of community approaches to ensure that more drinking water is safe and clean requires understanding the many diverse pressures and challenges to be considered in planning and managing water quality. These include a wide variety of land-use related point sources (for example, wastewater discharges from sewage treatment facilities or a variety of commercial or industrial

Source water: What is it? Why should we care?

- Source water is simply water in its natural state, prior to treatment for drinking. Approaches to source water protection focus primarily on surface water, aquifers and groundwater recharge areas.
- The primary objective in protecting source water is usually for drinking purposes. In many cases other water uses draw from the same source of drinking water supplies, including agricultural, commercial, institutional and industrial water users. In addition, there may be ecological and other non-consumptive water uses interconnected with drinking water supplies. For example, surface water sources of drinking water come from watersheds that provide for diverse environmental, recreational, cultural, spiritual and aesthetic values. By protecting water quality for drinking, all of these other values and uses of water may also benefit.



sources) and non-point sources (including runoff from urban development, and agricultural, forestry, and mining operations, flooding, landslides, erosion, and sediment transport). As such, the development of source water community plans should include a comprehensive long-term planning process that incorporates land-use planning into the protection of the water resource. Adjacent communities and jurisdictions, First Nation or municipal, naturally need to connect. In many cases, land and resource uses on Crown or private lands upstream of community water supplies, such as forestry, ranching, agriculture and mining, may be outside either jurisdiction.

Coupled with a planning process considerate of land use is the need for good infrastructure and decision-making support networks. A better understanding of the water resource itself will help develop and implement source water protections plans. It is mutually beneficial for local governments and First Nations to work together on data collection, information sharing, and infrastructure and development planning. Consideration may also need to be applied to assess the capacity of water providers to ensure that they are capable of meeting water quality standards.

Municipal–First Nation Service Agreements

Water service agreements, comprehensive integrated planning of land use and sharing of resources between First Nations and municipalities generally also benefits source water protection.

Elements to consider for drinking water service agreements include system capacity, planning and design, service needs, financing, performance criteria, operations, response plans, surface and ground water protection and if possible, land-use planning.

For most communities, the cost of installing, delivering, operating and maintaining a good drinking water system is seen as a significant limitation to maintaining system integrity. Coordinating investments in expensive systems between First Nations and municipal governments may facilitate deeper integration and advance more cooperative governance regimes.

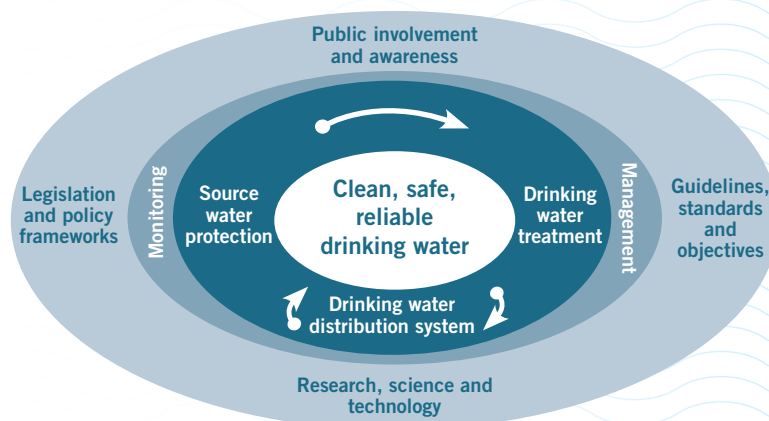
3.2 Management strategies

Protecting source water and drinking water quality is primarily about ensuring that point and non-point sources of pollution do not degrade water quality to the degree that it adversely impacts the uses of that water for human consumption (i.e., drinking). Water quality is a significant issue in some communities, particularly where there may be threats or pressures to community water supplies, where drinking water treatment capacity may be limited in relation to those threats and where the health of aquatic ecosystems is threatened by point or non-point sources of pollution. For some communities, meeting drinking water standards is a challenge.

Burns Lake Band and Village of Burns Lake, BC

Following a successful agreement signed between the Village of Burns Lake and Lake Babine First Nation in 1991, the village has also signed agreements with the Burns Lake Band for water and sewer, as well as other municipal services in April 2011.

Figure 1: Components of a multi-barrier approach to drinking water protection
(Canadian Council of Ministers of the Environment, 2004, cited in OSWS, 2008)



Approaches

Desired outcomes of source water protection planning may include ensuring a safe, secure supply of quality water for a wide variety of uses, managing wastewater discharges within the capacity of receiving waters to absorb and assimilate those wastes, managing land and resource development practices in ways that maintain and protect water quality, and managing human development patterns in ways that stabilize rather than destabilize the hydrologic cycle and associated erosion and sediment transport processes.

Comprehensive approaches to achieve desired outcomes for drinking water protection include appropriately managed and monitored source water protection, drinking water treatment and an appropriate drinking water distribution system. Approaches may include, but are in no way limited to the following:

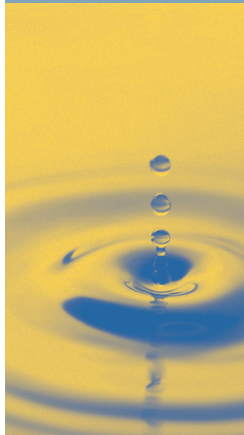
- **Source water assessments and response plans**

Assessments of drinking water source and systems are integral to understanding the state of a community's drinking water supplies and what needs to be done to improve them. Water providers often do not have control over land use within the watersheds from which drinking water is sourced. They may not be aware of natural

conditions or activities within a watershed or around aquifers that affect water quality. Assessments can identify, inventory and assess the drinking water source for the water supply system, including land use and other activities that may affect the source; the water supply system, including treatment and operation; monitoring requirements for the drinking water source and water supply system; and threats to drinking water that is provided by the system. Assessments can help to identify opportunities for preventative or remedial action.

- **Drinking water or source protection plans**

Source or drinking water protection plans are relevant for the protection of water quality and quantity for a specified source from a wide range of pressures. Such protection plans are typically developed for a specific source of drinking water supply such as a watercourse, watershed, reservoir, well or aquifer. Well or aquifer protection plans focus on the protection of groundwater quality from pollution sources associated with the land above aquifers where groundwater infiltration may carry contaminants from the surface to groundwater. Well or aquifer protection plans are developed at a geographic scale that includes the recharge area for a well or aquifer.



All of these plans should examine water quality threats from a variety of surface and ground-water sources including residential, industrial, commercial, institutional and agricultural land uses across a wide landscape. A holistic approach to planning, that involves all possible contributors and users, is encouraged.

Although the terminology and regulatory regimes vary across Canada, good source water protection plans should characterize the source (boundaries, sensitive areas, water quality and quantity), identify potential hazards in the source area (quality and quantity, point and non-point), address and prioritize health risks posted by identified hazards and establish and implement plans for eliminating or mitigating identified hazards (including clear objectives and timelines).

Municipal and First Nation governments can further protect drinking water sources and products by developing and implementing bylaws that control land use and development. Over and above managing and monitoring their water source, communities should also consider developing public action and awareness

programs designed to address social impacts on drinking water and improve local knowledge.

3.3 Water governance

In Canada, the primary responsibilities to protect water quality are shared among federal (primarily AANDC, Environment Canada, Fisheries and Oceans Canada), provincial (Ministries of Health, Environment, etc.), First Nations, municipalities and other organizations. The responsibility for providing clean, safe drinking water in Canada lies primarily with provincial and territorial governments, while municipalities usually oversee the day-to-day operations of water supply and treatment facilities. The federal government is responsible for overseeing water on federal lands and for providing safe water to First Nations peoples living on reserves. From a community health perspective, the roles and responsibilities for water treatment vary across communities in Canada, with jurisdiction over treatment ranging from municipalities, regional districts, counties, First Nations and other water suppliers.

Grand River Notification Agreement

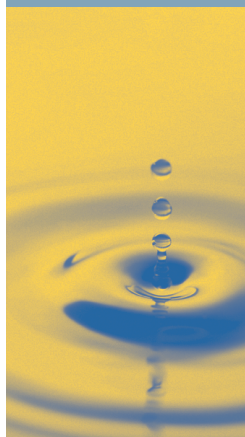
Signatories: The Six Nations of the Grand River, the Mississaugas of the New Credit, the County of Brant, Haldimand County, the City of Brantford and the Grand River Conservation Authority as well as the governments of Canada and Ontario

What has been termed the Grand River Notification Agreement was originally signed in October 1996 by the First Nations and municipal governments around the lower Grand River in southern Ontario, together with the federal and provincial governments and the Grand River Conservation Authority. It was renewed in October 1998 and again in October 2003 and was developed as a result of three common concerns shared by the First Nations and the municipalities along the Grand River: First Nations land claims; shared concern for environmental sustainability with respect to actions affecting water quality in the Grand River, including the impact of activities further upstream; and a recognized need for improved information sharing. The parties agreed to inform each other, according to a specified procedure, of actions that could affect the environment within the specified area. Although the agreement is not legally binding, it relies on compliance to advance the interests of the parties to the agreement.

Legislation/Regulations

The following is an overview of the main federal legislative structures in place related to source water protection. Changes in legislation and regulations will limit the following legislative highlights to a snapshot overview of systems in place in early 2011. Provincial legislation and regulations are the primary legal authorities for drinking water in Canada, but vary greatly by province and are subsequently too considerable to provide. Links to provincial and territorial legislation is provided in the resource section of the toolkit.

- **Canadian Environmental Assessment Act** (CEAA). Projects considered under the Act are screened for their impact on source water. This Act encourages responsible authorities to take actions that promote sustainable development in an efficient manner, promote cooperative action between the federal and provincial government with respect to the environmental assessment processes for projects and promote communications and cooperation between responsible authorities and Aboriginal peoples.
- **Canada Water Act** (CWA). This Act provides a framework for managing water resources in Canada. The *Canada Water Act* outlines the power to develop federal-provincial water resource management programs where there is a significant national interest. The Act also enables management programs to be developed for federal waters, inter-jurisdictional waters and international boundary waters (with respect to inter-jurisdictional water issues, the Act obliges the federal minister to let disputing bodies work together and only step in when others have failed).
- **Department of Health Act**. The *Department of Health Act* defines the powers, duties and functions of the Minister of Health, including duties related to health issues, such as access to potable water for Canadian citizens. Only the health issues under the jurisdiction of the federal government are covered in this Act.
- **Environmental Protection Act** (EPA). The EPA is designed to protect human health and contribute to sustainable development through pollution prevention and the protection of the environment (including water). Under this Act, advisory committees are established that may enter into agreements with provinces and Aboriginal peoples.
- **Indian Act**. The *Indian Act* enables an Indian band to enact bylaws regarding a range of issues, including to provide for the health of residents on the reserve and to prevent the spread of contagious and infectious diseases; the construction and maintenance of watercourses, roads, bridges, ditches, fences and other local works; and the construction and regulation of the use of public wells, cisterns, reservoirs and other water supplies.
- **First Nations Land Management Act** (FNLMA). This Act and the affiliated Framework Agreement (below) enable the participating First Nations to manage their reserve lands and resources outside of the *Indian Act*. Several bands across Canada have signed individual agreements. The *First Nation Land Management Act* speaks of land and resources, the term “resources” often interpreted to include water.



- **Framework Agreement on First Nations Land Management.** A First Nations band has the option to manage its reserve lands under the *Framework Agreement on First Nations Land Management*, by developing and adopting its own land code. The land code sets out the basic land laws of that First Nation, thereby replacing the land management provisions of the *Indian Act*. Participating First Nation bands receive the power to make laws respecting the development, conservation, protection, management, use and possession of First Nations land and interests and licences in relation to land. Federal administration of the reserve land ceases under the *Indian Act*. This type of government-to-government agreement enables First Nations to establish their own regimes to manage their lands and resources, providing for more decision making at the local level.
- **Guidelines for Canadian Drinking Water Quality.** The federal government in collaboration with the provinces and territories developed these guidelines under the Federal-Provincial-Territorial Committee

on Drinking Water. This Committee includes representatives from all provinces and territories as well as Environment Canada and Health Canada, the latter providing secretariat support for the Committee. The guidelines outline the minimum requirements of every water system in Canada to ensure clean, safe drinking water. The guidelines reinforce drinking water requirements in all Canadian jurisdictions to meet or exceed the *Guidelines for Canadian Drinking Water*.

- **Bill S-11 An Act Respecting the Safety of Drinking Water on First Nation Lands.** At the time of the writing of the toolkit, this bill had not passed third reading.

Through the entrenchment of Aboriginal rights in the Canadian Constitution of 1982, land claims and self-government agreements and treaties, and ongoing affirmations of rights by the Canadian Supreme Court, indigenous peoples of Canada have distinct rights, both as governments and individual rights holders, to be active participants in water-related decision making.

City of Saskatoon and Muskeg Cree Lake Nation, SK

The creation of a new Muskeg Cree Lake Nation commercial urban reserve adjacent to the City of Saskatoon in 1988 was supported by the development of an agreement between those parties that identified water and sewer services, fees and levies as well as roads, natural gas and electricity. While protecting source water was not the primary reason for creating the agreement, the association between the development of land and the provision of safe drinking water was made. The evolutionary nature of the agreements and relationship between these parties is notable.

4. Best practices references

This section provides references for best practices in the following sectors:

- Community planning
- Water
- Infrastructure and public works
- Sustainable development

4.1 Community planning

FCM's Green Municipal Fund™

GMF offers best practices, resources and tools to support municipal governments and other interested parties working toward sustainable community development, including sustainable community planning. The GMF Planning sector includes official plans, neighbourhood plans, and economic development plans.

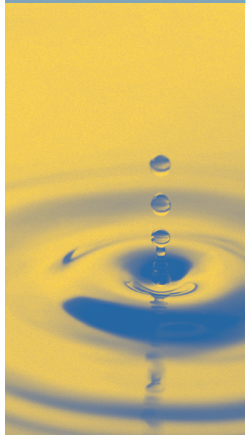
Whistler Centre for Sustainability

The Whistler Centre for Sustainability (WCS) takes the expertise and leadership from the lessons it learned while developing integrated sustainability plans in Whistler, British Columbia, and combines them with global best practices to deliver consulting services and learning opportunities for interested local governments. The WCS can assist communities with integrated community sustainability planning; energy and emissions management; measurement, conservation and investment analysis; and planning and reduction strategies. It can help them develop key sustainability performance indicators, including monitoring and reporting tools; adapt proven community engagement practices; and develop on-the-ground implementation strategies and tools. It can also help communities develop applications for federal gas tax funding.

Municipal Sustainability Planning

Alberta Urban Municipalities Association (AUMA)

AUMA provides information about sustainability planning. It recommends that municipalities take a broad view of sustainability by developing a comprehensive long-term plan that includes and integrates the five dimensions of sustainability — social, cultural, environmental, economic and governance. This website includes many valuable resources and guidebooks for communities looking to create and implement a sustainable community plan.



4.2 Water

Protocol for Safe Drinking Water in First Nations Communities

Aboriginal Affairs and Northern Development Canada (AANDC)

The document, *Protocol for Safe Drinking Water in First Nations Communities*, contains standards for designing, constructing, operating, maintaining and monitoring drinking water systems on reserves. It can act as a reference guide for operators and public works employees on reserves as well as anyone interested in learning more about water standards on reserves.

Thinking Beyond Pipes and Pumps: Top Ten Ways Communities Can Save Water and Money

The POLIS Project on Ecological Governance

The handbook, *Thinking Beyond Pipes and Pumps*, presents an expanded definition of urban water infrastructure — one that goes beyond the existing physical infrastructure of pipes, pumps and reservoirs. It emphasizes decentralized technologies and lasting local programs that inspire behavioural change. There is a need for social infrastructure (i.e., the planning processes, education programs and financial and human resources) to liberate the full potential of water efficiency, conservation and sustainability on a community level.

Worth Every Penny: A Primer on Conservation-Oriented Water Pricing

University of Victoria – POLIS Project

This publication emphasizes the importance of pricing water to encourage conservation at the user level. It demonstrates

- how to price water for its real costs
- how negative impacts can be mitigated
- how revenue generated from resetting pricing can be used to invest in water protection and innovative technologies to enhance water sustainability efforts

FCM InfraGuide

The Federation of Canadian Municipalities (FCM)

This infraguide provides a range of best practices and case studies relating to decision making and investment (life-cycle planning), meeting environmental standards, integrated infrastructure, technical solutions to water challenges and technical solutions to challenges relating to waste and stormwater. It also includes two reports relating to transportation infrastructure — roads and sidewalks, and public transit.

INAC/AFN Plan of Action for Safe Drinking Water — Progress Reports

Aboriginal Affairs and Northern Development Canada (AANDC)

AANDC (formerly INAC) will provide funding for water upgrades in 18 separate projects on reserves across Canada. For information about the reserves receiving upgrades, see Appendix B in the 2009–2010 INAC report. The report also mentions provincial regulations that may be incorporated into reserve regulations to meet the needs of First Nations communities.

Water for Life

Government of Alberta

The Government of Alberta has released the Water for Life Action Plan, which reflects Alberta's Water for Life Strategy 2003. The government and its partners will follow this roadmap over the next 10 years. This renewed strategy better reflects the population increase and economic growth that Alberta has seen over the past years, and Albertans' changing water needs. As in the original, the renewed Water for Life strategy has three main goals: safe, secure drinking water; healthy aquatic ecosystems; and reliable, quality water supplies for a sustainable economy. These goals will be met through knowledge and research, partnerships, and water conservation. A complementary Water for Life website has several great resources to better understand Alberta's water resources and it provides information about source water protection.

Design Guidelines for First Nations Water Works

Aboriginal Affairs and Northern Development Canada (AANDC)

The design guidelines in the document, *Design Guidelines for First Nations Water Works*, were developed to serve as a general guide to engineers in the preparation of plans and specifications for public water supply systems on First Nations lands.

From the Source to the Tap: A Multi-Barrier Approach to Safe Drinking Water

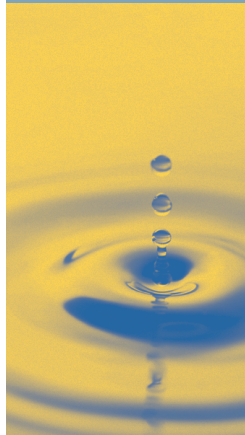
Ontario First Nations Technical Services Corporation (OFNTSC)

This short position paper outlines the elements of a multi-barrier approach, which will help ensure that Canadian drinking water supplies are kept clean, safe and reliable for generations to come. The multi-barrier approach recognizes the inter-relationship of health and environmental issues, and encourages the integration of efforts to improve public health with those who also protect the natural environment.

National Assessment of Water and Wastewater Systems in First Nations Communities — Summary Report

Aboriginal Affairs and Northern Development Canada (AANDC)

This report is the result of an assessment of water and wastewater systems on each reserve across Canada. This assessment was based on an on-site inspection of each facility, and recent drinking water quality and wastewater effluent quality data. As the assessments were completed, the results were shared with individual communities so that recommended improvements could be undertaken to reduce or mitigate potential water quality problems and minimize any health risks. INAC estimates that there are approximately 95 water agreements and 91 wastewater agreements (i.e., municipal type agreements [MTAs]) across Canada. These agreements were not included in the study.



Water Conservation for Life

Alberta Urban Municipalities Association (AUMA)

AUMA has created a website to help its members build capacity to meet conservation, efficiency, and productivity (CEP) targets with the support of Alberta Environment. A number of events, resources and information about water use in Alberta are included.

4.3 Infrastructure and public works

Building Capacity for Sound Public Works in First Nations Communities: A Planning Handbook

Institute on Governance

This handbook is a capacity-building toolkit created to help First Nations to implement a public works plan. It includes useful resources and a guide through the planning process. This handbook is recommended for any community looking to implement a public works plan, make major changes to infrastructure and public works, or for communities that are taking on additional responsibilities for public works.

Public Works in Small and Rural Municipalities

Institute on Governance

This document summarizes how public works (i.e., land-use planning, building codes, roads and bridges, parks and recreation facilities, water and sewage systems, and solid waste collection and disposal) are managed in small municipalities across Canada. This document would also be useful for First Nations communities.

FCM InfraGuide

This infraguide provides a range of best practices and case studies relating to decision making and investment (e.g., life-cycle planning), meeting environmental standards, integrated infrastructure, technical solutions to water challenges, technical solutions to challenges relating to waste and stormwater. It also includes two reports relating to transportation infrastructure — roads and sidewalks, and public transit.

Cost Sharing Works: An Examination of Cooperative Inter-Municipal Financing

Alberta Association of Municipal Districts and Counties (AAMDC)

This paper offers a summary of cost sharing between municipalities including benefits, disadvantages, and principles of cost sharing. Although this paper is intended for a municipal audience, it could also be used in the context of First Nations (e.g., for municipal cost sharing).

4.4 Sustainable development

Sustainability Planning Toolkit

Association of Ontario Municipalities

The Association of Municipalities of Ontario has created a sustainability planning toolkit to assist municipalities with creating sustainability plans in the spirit of the gas tax fund. This toolkit provides tools to develop goals, structure sustainability plans, prepare sustainability plans and create sustainability indicators. The toolkit is a useful resource for both municipalities and First Nations looking to implement a sustainable community plan.

Centre for Indigenous Environmental Resources

Centre for Indigenous Environmental Resources is a not-for-profit national organization that Chiefs from across the country formed to support sustainable development and encourage action on climate change. It includes a web-based library of resources and information about environmental seminars and workshops.

Simon Fraser University Centre for Sustainable Community Development

Sustainable Community Development (SCD) aims to integrate economic, social and environmental objectives in community development. The Centre's mission is to support the sustainable development of communities through research, education, and community mobilization. It provides research, training, and advisory services throughout British Columbia, Canada, and internationally.

Local Governments for Sustainability

Local Governments for Sustainability (ICLEI) is an international association of local governments and national and regional local government organizations that have made a commitment to sustainable development. ICLEI provides technical consulting, training, and information services to build capacity, share knowledge, and support local government in implementing sustainable development at the local level.

5. Funding options

There are several ways that adjacent First Nations and municipalities can work together to leverage funding for community infrastructure and the development of mutually beneficial service agreements.

First Nations and municipalities are responsible for securing funding and budgeting for their infrastructure and service needs. In the case of First Nations, AANDC often provides the funding for capital projects and most service costs based on their funding matrix. Municipalities often depend on transfers from the provincial government or more recently from federal stimulus funding. Nevertheless, First Nations and municipalities can often find themselves with tight budgets and little resources. This chapter provides an annotated list of available funding that municipalities and First Nations can access. This information is not exhaustive of all funding options and will need to be updated over time. And it can act as a resource to start thinking about leveraging funds and making the implementation of service agreements more financially manageable.

5.1 National

FCM's Green Municipal Fund™

Through the Green Municipal Fund (GMF), FCM provides funding to three types of environmental initiatives: plans, studies and capital projects. Grants are available for sustainable community plans, feasibility studies and field tests, while a combination of grants and loans are available for capital

(infrastructure) projects. Funding is allocated in five sectors of municipal activity: brownfields, energy, transportation, waste and water.

GMF funding for eligible projects is available to all municipal governments and their partners (including First Nations). First Nations can also apply for GMF funding independently of a municipality if the following requirements are provided to FCM:

- a copy of the relevant statute and agreement with the various orders of government
- documents that demonstrate that the province or territory has passed an act or a regulation that affords the status of municipality
- documents that the First Nations are a legal entity capable of entering into contracts is provided to FCM

For more information, visit www.gmf.fcm.ca.

Building Canada Fund

The Building Canada Fund (BCF) is a national infrastructure program that aims to advance infrastructure projects that will contribute to a stronger economy, a healthy environment, and better communities. Project funding will be allocated across Canada. Funds are divided into grants for small project areas (i.e., populations under 100,000) and larger population areas.

Green Infrastructure Fund

The Green Infrastructure Fund focuses on green energy generation and transmission infrastructure, building and upgrading wastewater treatment systems, and improving solid waste management. To be eligible for funding, projects must promote cleaner air, reduced greenhouse gas emissions and cleaner water. In addition, projects must fall within any of the following categories: wastewater infrastructure, green energy generation infrastructure, green energy transmission infrastructure, solid waste infrastructure, and carbon transmission and storage infrastructure.

Federal Gas Tax Fund

Municipalities can apply for funding to implement infrastructure projects that promote cleaner water, cleaner air or reduced greenhouse gas emissions. Predictable, long-term and entitlement-based funding is helping municipalities plan for environmental sustainability and address a massive, province-wide infrastructure deficit. Municipalities can contact their provincial territorial organization for more information about funding in their province.

5.2 Provincial

5.2.1 Alberta

Collaborative Governance Initiative (CGI)

CGI helps municipalities develop collaborative protocols and processes to avert conflict escalations and to allow municipalities to rely on an agreed-upon process for collaborative engagement, which can include engagement with adjacent First Nations. CGI can provide grant money for an assessment phase and an implementation phase.

Where appropriate, through CGI, Municipal Dispute Resolution Services (MDRS) provides for a cost-sharing arrangement between municipalities and Alberta Municipal Affairs to cover part of the consultant's costs to develop dispute resolution preventative processes. Grant funding for the assessment phase can reach \$50,000, while grant funds for the implementation phase can reach \$30,000 on a matching basis. MDRS can also provide interested governments a list of consultants with municipal or CGI experience.

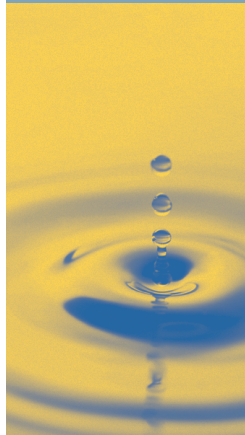
Alberta Capital Finance Authority (ACFA)

ACFA provides local entities with financing for capital projects. ACFA is able to borrow in capital markets at interest rates that would not be available to local authorities acting independently. Interest rates fluctuate as they are based on the cost of borrowing.

5.2.2 British Columbia

Community to Community Forums (C2C)

The C2C Forum program promotes communication and collaboration between municipalities and First Nations by providing a small grant, which covers half of the allowable costs of the venue, food and planning for a C2C forum. The program is administered by the Union of British Columbia Municipalities and supported by the First Nations Summit. Forums are completely led and organized by the communities involved and give participants the opportunity to get to know each other and work together. All municipal, regional district and First Nations governments (e.g., band or tribal council) in British Columbia are eligible to apply for funding for a C2C forum.



5.2.3 Manitoba

Manitoba Water Services Board

The Manitoba Water Services Board assists rural residents outside Winnipeg to develop safe and sustainable water and sewerage facilities. This board can provide project management for all rural water pipeline projects. These activities include groundwater investigation, Environment Act proposals, design, construction, post-construction warranty service and operational assistance. The board provides one-third of the project costs and the remaining two-thirds are generally shared between the municipality and the federal government.

Manitoba Water Stewardship Fund (WSF)

The Manitoba Water Stewardship Department is committed to preserving the province's rivers, lakes and wetlands. It promotes the importance of having quality water for people, the environment and the economy. To help achieve this goal, the Manitoba government has developed the Water Stewardship Fund (WSF), which provides financial assistance to develop, implement and promote projects that maintain or improve the stewardship of Manitoba's water. This includes funding the formation of watershed management plans, water quality initiatives and water conservation programs. Funding is usually limited to \$25,000 per project.

5.2.4 New Brunswick

Municipal Rural Infrastructure Fund (MRIF)

The Municipal Rural Infrastructure Fund (MRIF) targets municipal and rural infrastructure that improves the quality of life and economic opportunities for communities. Most projects under this fund will require a "green" element: improving the quality of air or water (or both) in New Brunswick. These projects can include improving local systems for water, wastewater, solid waste, public transit and energy efficiency in municipal buildings.

5.2.5 Nova Scotia

Integrated Municipal Infrastructure Asset Management Tool

Service Nova Scotia and Municipal Relations developed an asset management tool for integrated municipal infrastructure to assist in determining priorities for capital infrastructure investments within individual municipalities and the province overall. This is a useful capacity-building tool for municipalities and First Nations.

Life-cycle planning tools are available for water, wastewater, water mains, reservoirs, solid waste, transfer stations, roads, and integrated roads, sewer and water. Tools and the Life Cycle Costing Analysis Tool Handbook are available.

5.2.6 Ontario

Ontario First Nations Technical Services Corporation (OFNTSC)

The OFNTSC provides professional technical advisory services to all First Nations in Ontario and aims to help foster technical self-reliance. The OFNTSC can provide assistance to First Nations in the area of water and wastewater including quality assurance initiatives, capital planning and development, engineering studies and training. It also provides peer reviews of designs, reports and studies including water treatment pilot plants and process optimization. Other areas of expertise include fire and safety, housing, environment, and operations and maintenance.

Infrastructure Ontario Loan Program

The Infrastructure Ontario Loan Program provides affordable financing for all capital investments including water, wastewater and sewage infrastructure; roads and bridges; culture, tourism, administration, and recreation infrastructure; water, hydro, heating, ventilating and air conditioning and communications systems; ambulances, fire trucks, snowplows and garbage trucks; ferries and docks; and local police and fire stations.

5.2.7 Quebec

Programme d'infrastructures Québec-Municipalités (PIQM)

The PIQM provides funding for infrastructure in small, large, and regional municipalities in Quebec with a focus on water infrastructure for the purpose of improving quality of life, the environment, and economic opportunities for communities. The funding can be used to construct new infrastructure or upgrade existing facilities. Funding ranges from 50 to 85 per cent of total project costs.

5.2.8 Saskatchewan

Northern Capital Grants Program

The Northern Capital Grants Program provides financial and technical assistance to northern communities in Saskatchewan to assist in the construction or upgrading of municipal facilities and for the acquisition of municipal equipment. The grants may provide up to a maximum of 90 per cent of the cost of the project.

Municipal Capacity Development Program

The Municipal Capacity Development Program (MCDP) was created to promote growth, cooperation and community development through inter-municipal partnerships in Saskatchewan. The MCDP was launched to assist municipalities in building capacity for planning; promote cooperation among municipalities to deliver more cost effective infrastructure and services; further the adoption of inter-municipal growth management plans; and foster long term working relationships among communities.

The MCDP can help facilitate relationships; engage municipalities and their stakeholders to work together to improve service delivery and build capacity; support the development of municipalities; assist in carrying out inter-municipal sustainability plans and strategies; and provide municipalities with the tools for a successful planning process. These services can also be extended to municipalities that are working with First Nations.

The MCDP website is a great resource for communities outside Saskatchewan. This website contains a collection of toolkits, guides, and templates, which municipalities and First Nations can benefit from as they seek to strengthen relationships and develop their communities.

Planning for Growth

The Planning for Growth (PFG) program seeks to enhance regional planning capacity and establish best practices for facilitating sustainable growth and development across Saskatchewan. The program will share project costs with groups of two or more municipalities that

- facilitate regional planning to support the coordination of infrastructure and land use to accommodate growth
- showcase best practices for planning including processes
- provide methodologies and planning models
- build municipal and professional planning capacity in municipalities and regions
- build and enhance relationships required to support regional planning initiatives

5.3 Aboriginal Affairs and Northern Development (AANDC)

First Nations Infrastructure Fund (FNIF)

The FNIF provides money to fund key infrastructure projects that fall under the following categories: planning and skills development, solid waste management, roads and bridges, energy systems and Internet connectivity. Most arrangements will be set up as cost sharing between the First Nations and the federal government, with a maximum contribution of \$10 million. It is possible to also receive funding under this program if the First Nation is in partnership with a municipality. See the website for more information about eligibility criteria and application information.

5.3.1 AANDC infrastructure funding

Federal investments to support infrastructure in First Nation communities focus on mitigating health and safety risks, maximizing the life span of a physical asset, ensuring infrastructure meets applicable codes and standards, and ensuring community infrastructure is managed in a cost-effective and efficient manner.

Three streams of expenditures are funded by the department's Capital Facilities and Maintenance Program:

- **Major Capital** (representing approximately 26% of the budget) funds large or complex infrastructure projects. Major Capital projects are defined by AANDC as “non-core” funded acquisition, construction and/or major repair projects in excess of \$1.5 million and require greater involvement and management from AANDC
 - **Minor Capital** (representing approximately 38% of the budget) funds minor infrastructure repairs, renovations and upgrades (under \$1.5 million). The funding is provided in the form of an annual allocation to First Nations.
 - **Operation and Maintenance** (representing approximately 36% of the budget) funds the costs of operating and maintaining community infrastructure. The funding is provided in the form of an annual allocation to First Nations based upon asset inventory.
- To fund these three types of expenditures, there are two types of agreements:
1. **Comprehensive Funding Arrangement (CFA)**
 - A program budgeted funding arrangement that AANDC enters into with recipients for a one-year duration and which contains programs funded by means of contribution, which is reimbursement of actual expenditures.
 - This may take the form of either a Flexible Transfer Payment (FTP), which is formula funded and surpluses may be retained provided terms and conditions have been fulfilled; and/or grant, which is unconditional.
 2. **Canada/First Nations Funding Agreement (CFNFA)**
 - A block-budgeted funding agreement that AANDC and other federal government departments enter into with First Nations and Tribal Councils for a five-year duration.
 - Contains a common set of federal government funding terms and conditions in the main body of the agreement, while schedules attached to the agreement contain terms and conditions specific to each federal department.
 - Defines minimum standards for a local accountability framework in order to transfer increased authority to First Nations over program design and delivery and the management of funds. First Nations may redesign programs to meet specific community needs.

Under both arrangements, the funding of major capital takes the form of a Contribution Funding Arrangement, whereby only department-approved projects are funded. There are established project related processes, including capital project priority rankings and project application/proposal assessments. Major capital expenditures are funded separately from the “core” funding provided to First Nations. As well, “block” funding of all programming including minor capital and operation and maintenance, pursuant to the CFM program, is provided to First Nations at intervals specified in funding agreements.

5.3.2 AANDC major capital projects selection criteria

How are infrastructure projects selected for funding?

AANDC regional offices employ a ranking system as demand historically exceeds available funding resources. The National Priority Framework (NPRF) was created to ensure that regional processes match up with national funding priorities.

Use of the Priority Matrix

Regions use what is known as a “Priority Matrix” for the following:

- Classify all major and minor capital projects to a place within the matrix based on the definitions that accompany the matrix grid.
- Assign all applications a “priority code” (e.g., B-2) to help sort applications and accompanying documentation.

- Allocate funds to the highest priority projects as regions see fit.
- Examine unfunded projects in each priority area as a way to demonstrate where the needs reside and how they may shift over time.

The following chart shows the Priority Matrix used to classify capital projects. Based on a capital projects application, the regional office will use the definitions that accompany the matrix (provided below) to classify the project in a “priority code” (a combination of the “funding category” (A-F) and the priority category (1–5). Based on the projects placement on the matrix, the project will be given an overall priority (1–4).

For example, projects involving water and wastewater that are to protect the immediate health and safety of the on-reserve community (B-1) are given the highest priority (1) as represented by the black. The lowest priorities are coloured pale blue and would include education facilities that require capital for growth after two years (C-5), for example.

Figure 2: National Priority Funding Evaluation and Measurement Matrix

PROGRAM ACTIVITIES	Renovation (F-1)	NCSCS Type 1 (E-1)	(D-1)	(C-1)	(B-1)	(A-1)	Protection of health and safety assets	PROGRAM ACTIVITIES • CATEGORIES "A" TO "D"
	New Const. (F-2)	NCSCS Type 2 (E-2)	(D-2)	(C-2)	(B-2)	(A-2)	Health and safety improvements	
	O&M (F-3)	NCSCS Type 3 (E-3)	(D-3)	(C-3)	(B-3)	(A-3)	Recap. / Major Maint.	
	New Const. Grwth<2y (F-4)	N/A	(D-4)	(C-4)	(B-4)	(A-4)	Growth / Need Less than 2 yrs.	
	New Const. Grwth<2y (F-5)	N/A	(D-5)	(C-5)	(B-5)	(A-5)	Protection of health and safety assets	
INAC CAPITAL ASSET FUNDING CATEGORIES								
	Housing	Contam. Sites ²	Comm'ty Infra.	Education Facilities	Water/ Sewer	Custodial Assets		

■ PRIORITY ONE
 ■ PRIORITY TWO
 ■ PRIORITY THREE
 ■ PRIORITY FOUR

Funding Categories

A – Custodial assets
B – Water and wastewater
C – Education facilities
D – Community infrastructure
E – Contaminated sites
F – Housing

Priority Categories

1 – Protection of health and safety
2 – Health and safety improvements
3 – Recapitalization and major maintenance
4 – Growth with need in less than two years
5 – Growth with need in more than two years

First Nations Infrastructure Investment Plan (FNIIP)

The First Nations Infrastructure Investment Plan is developed annually in partnership with First Nations to strategically plan investments in the short and medium terms. The national FNIIP is a roll-up of eight regional FNIIPs, based on five-year plans developed by First Nations communities and submitted annually to AANDC.

The FNIIP includes priority investment areas, provides a rationale to how it was developed and outlines details of specific eligible projects for investment. The FNIIP is a planning document. Not all projects identified in the plan will receive the level of funding identified in a particular year. The regional staff works with First Nations throughout the year to support projects on a prioritized basis with available resources. Adjustments to the plan occur throughout the year and into future years as community, project and financial circumstances change.

5.3.3 Service agreement funding

Service agreements are managed through AANDC regional offices and thus funding practices will vary slightly across Canada. The following section does not apply to First Nations who are receiving funding through “block funding,” which is more common in the Atlantic Region.

AANDC will provide funding for services delivered through service agreements for select services at the same percentage that would be contributed according to the formulas established by AANDC. These services are funded at 80 to 90 per cent of the Gross Funding Requirement (GFR) estimated for that service.

Eligible Services

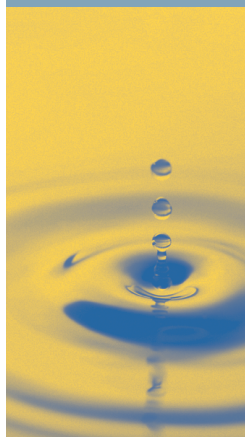
- Street lights: 90 per cent of GFR
- Potable water supply and distribution: 80 per cent of GFR
- Wastewater collection and disposal: 80 per cent of GFR
- Solid Waste (collection, landfill fees, recycling): 80 per cent of GFR
- Fire protection: 90 per cent of GFR
- Emergency services (911): 90 per cent of GFR

Some services are not eligible for federal reimbursement under a service agreement.

Ineligible Services

- Policing
- Animal and pest control
- Snow removal
- Maintenance of recreation facilities
- Fire hydrant maintenance and inspection
- Emergency preparedness agreements
- Residential lease sites
- Ferry operation and maintenance
- Delivery of fuel, heating or electricity
- Late fees
- Bottled water
- Tree removal
- Chimney sweeping
- All costs not pertaining to residences

Sometimes funding will be provided through service agreements because a service will fall into categories. For example, if a First Nation owns its own garbage truck, the use of that truck in a service agreement is eligible for funding for operation and maintenance each year. The First Nation could also have a service agreement with a neighbouring municipality for the use of a municipal landfill. The landfill fees can be partially reimbursed by submitting the expense to AANDC through its annual service agreement process explained below.



How service agreements are processed by AANDC

Each AANDC regional office sends out a package in November and December each year asking for the First Nation to complete a service summary sheet. The services summary sheet includes all services that AANDC has record of existing (through service agreements) and space for the Band administration to update any information. Services can be any of the following:

- **Ongoing:** AANDC has record that these services are being provided and if all information including dates, fee amounts, etc. are correct. The sheet may be signed and returned.
- **Expired:** If a formal service agreement has expired, but services are continuing the First Nation must submit either a new signed service agreement or invoices for the services.
- **New:** New services should be updated and either a service agreement or invoices can be attached.

The AANDC office must receive these sheets no later than January 15 each year in order to be eligible for service funding beginning April 1 that year.

Things to keep in mind

- If invoices are provided, they must show at least three months' worth of charges.
- If an outstanding amount from the previous year was not submitted, it can be added to the summary sheet to be reimbursed.
- AANDC checks for variances from year to year in service costs. If there is a significant change in service fee rates (over 10% increase) you should include a short reason why the increase is occurring. Municipalities can help this process by providing a short explanation in writing and ensuring pricing calculations are well documented and transparent on service agreements.
- AANDC also looks for "reasonability" in service costs. The best way of ensuring costs are approved is by demonstrating pricing calculations.
- AANDC does not fund services for anything but residential use. If anything other than residential use is documented or charged, the amount for the non-residential use will be subtracted from the total amount reimbursed.
- Any service agreements submitted to AANDC as proof of payment must include signatures from both parties. Therefore, final agreements are preferable to drafts.

6. Glossary of terms

Aboriginal interests – may include concerns, wants or aspirations for a wide range of issues related to environment, social, education, economics, etc.

Aboriginal people – the descendants of the original inhabitants of North America (Status or Non-Status). The 1982 Constitution recognizes three groups of Aboriginal peoples: Indians, Inuit and Métis. These separate groups have unique heritages, languages, cultural practices and spiritual beliefs. Their common link is their indigenous ancestry.

Aboriginal rights – the rights that are specific to Aboriginal peoples in Canada based on their traditional occupancy of the land before first contact with European settlers. Rights are based on tradition and culture and therefore vary from group to group. Some common examples of Aboriginal rights include fishing, trapping and hunting.

Aboriginal self-government – a government that has been designed and implemented by Aboriginal peoples.

alternative dispute resolution (ADR) – refers to a number of methods to assist in the resolution of disputes outside the court system.

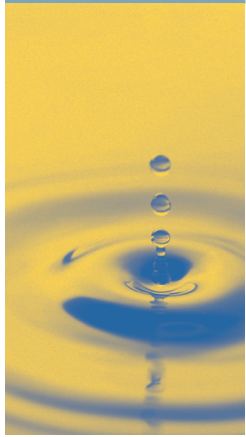
band – a body of Indians as defined under the *Indian Act* and declared to be a band by the Governor General in Council for the purposes of the Act. The term First Nation is often used in place of band.

band council resolution – the authority mechanism by which the elected representatives on a band council authorize an action.

best practice – refers to the best technique for delivering a desired outcome.

bylaws – a form of legislation passed by a municipal government relating to matters under the jurisdiction of the municipality. For the most part, they relate to land use, public order, road closings, some expenditures and similar issues. First Nations that develop a land code under the *First Nations Land Management Act* can also develop more extensive laws governing reserve lands than the bylaws allowed under the *Indian Act*.

capacity building – assistance provided to a certain group or individual to improve competencies and skills in a particular area.



First Nation – the term First Nation came into usage in the 1970s to replace the term Indian, which some may find offensive. Although the term First Nation is widely used no legal definition exists. The term First Nations People refers to the descendants of the original inhabitants of Canada. However, the term First Nation has also been adopted to replace the word band in the name of communities.

Indian – people who are one of three groups recognized as Aboriginal under the Constitution Act, 1982. Indians in Canada are often referred to as Status Indians, Non-Status Indians, Treaty Indians and registered Indians.

Indian Act – federal legislation designed to give effect to the legislative authority of Canada for “Indians and lands reserved for the Indians,” pursuant to s.91(24) of the *Constitution Act*, 1867.

municipality – a geographical area that is incorporated.

municipal-type service agreement – a term that Indian and Northern Affairs Canada uses to refer to service agreements. The agreements can be made between two First Nations or a First Nation and a provincial government, municipal government, private contractor, Crown corporation, individual or organization that could involve the provision of municipal services.

Non-Status Indians – Non-Status Indians are people who consider themselves to be Indians or members of a First Nation but the Government of Canada does not formally recognize as a Status Indian. Some are unable to prove their status or they have lost status rights. Some people are no longer considered Status Indians because of discriminatory practices in the past, especially toward women. Non-Status Indians are not entitled to the same rights as Status Indians.

on-reserve community – the locality where First Nations members reside on a reserve, comprising physical infrastructure, community services, and installations.

registered Indian – a person who is defined as an Indian under the *Indian Act* and who is included on the Indian Register maintained by the federal government.

reserve – tract of land, the legal title to which is held by the Crown, set apart for the use and benefit of an Indian band.

service agreement – an agreement (either formal or informal) between a First Nation and a municipality for the purpose of one party purchasing certain local services from the other as opposed to each party providing the services separately to their respective communities.

service area – the geographic area generally contiguous to an existing reserve community within which reserve programs and community services can be delivered, infrastructure extended and installations shared at little or no incremental cost.

Status Indian – a person who is registered as an Indian under the *Indian Act*. The Act sets out the requirements for determining who is an Indian for the purposes of the Act.

treaty – an agreement between the federal government and a First Nation that defines the rights of the First Nation with respect to lands and resources over a specified area and may also define the self-government authority of a First Nation.

Treaty Indian – a Status Indian who belongs to a First Nation that signed a treaty with the Crown.

tribal council – traditionally an autonomous body with legislative, executive, and judicial components. Contemporary councils usually represent a group of bands to facilitate the administration and delivery of local services to their members.

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