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First Nations— Municipal Community Infrastructure Partnership Program

Service Agreement Toolkit

2ND EDITION



Service Agreement Templates Inside

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

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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 more than 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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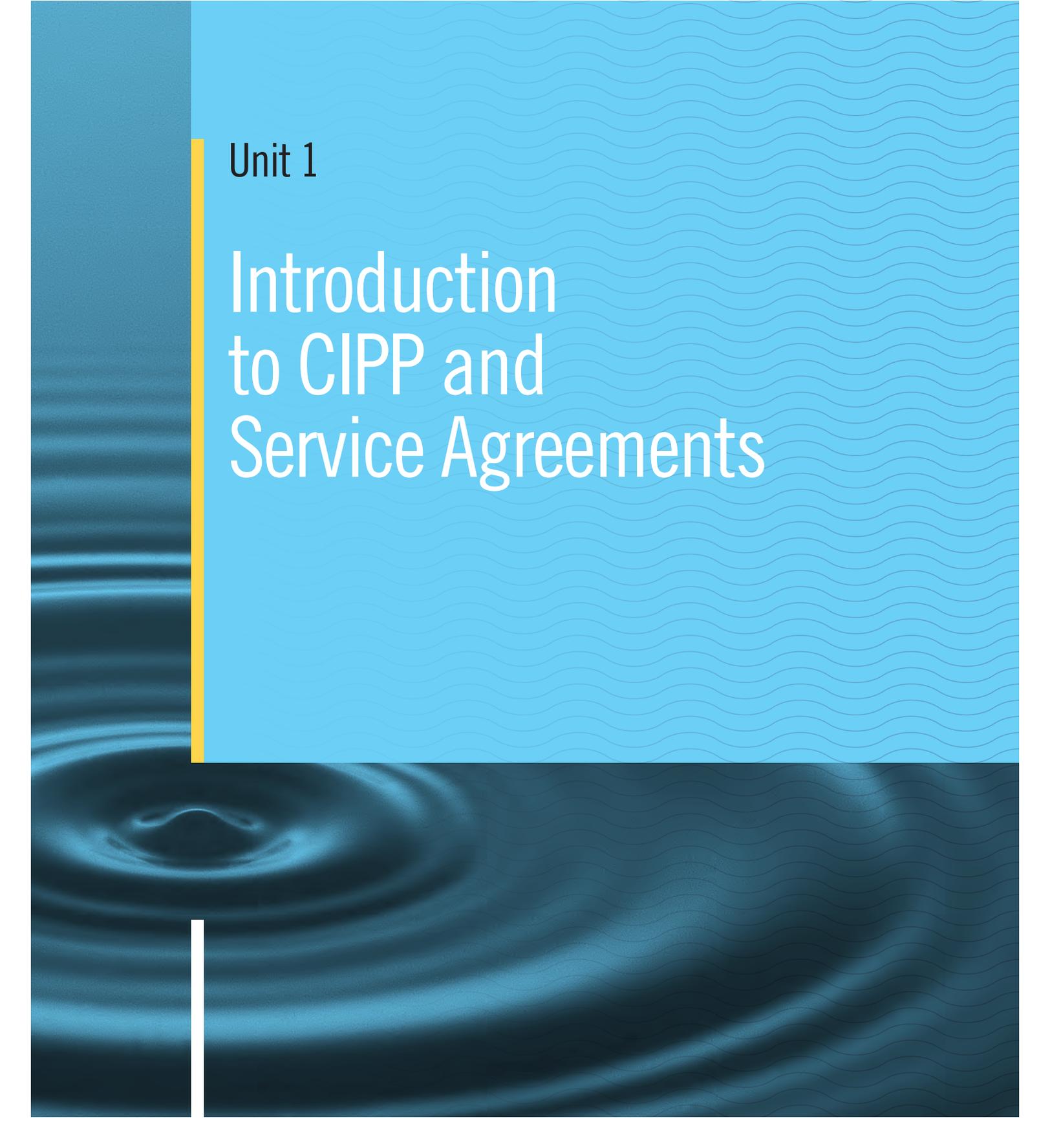
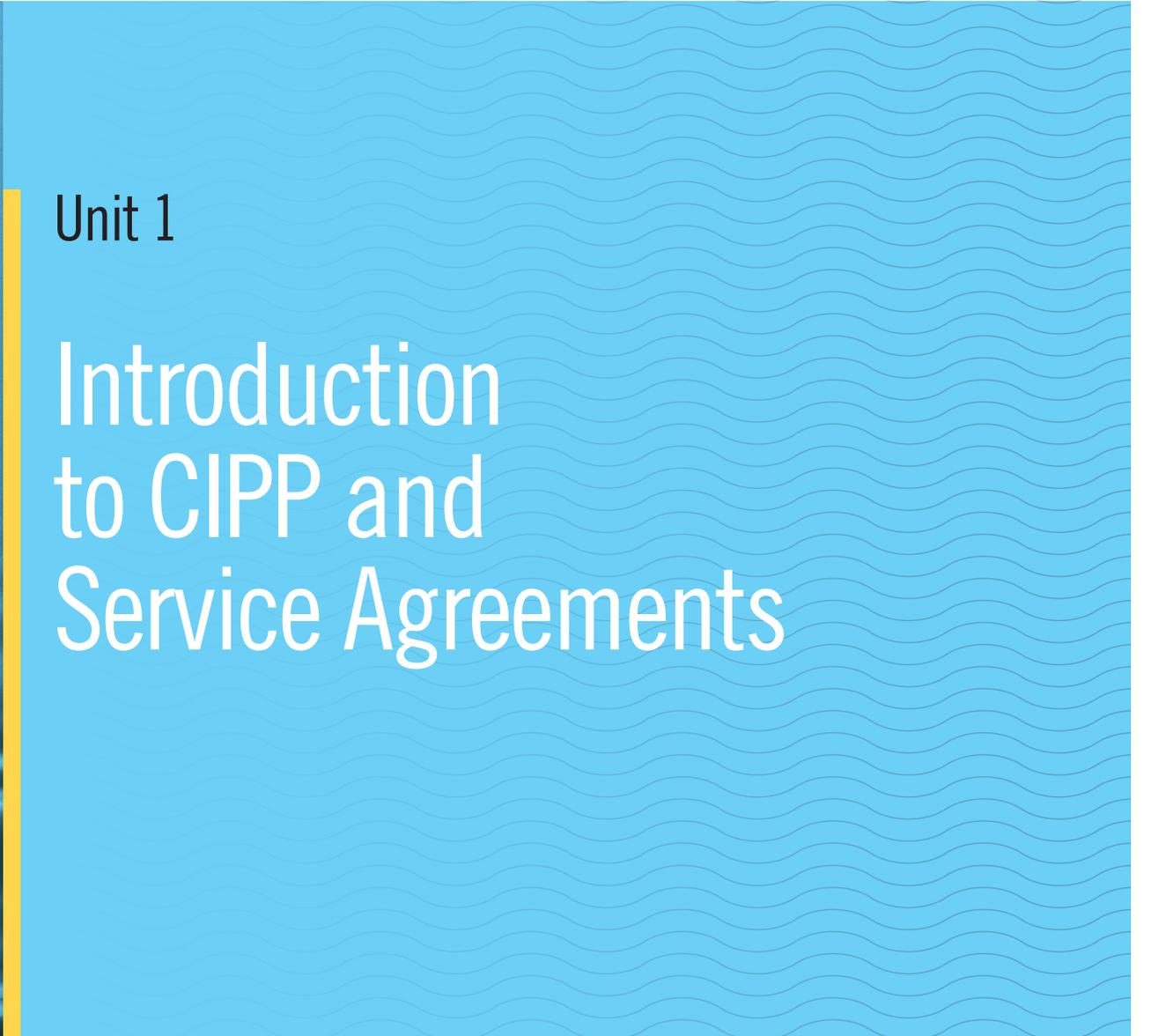
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List of acronyms

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



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 improve 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

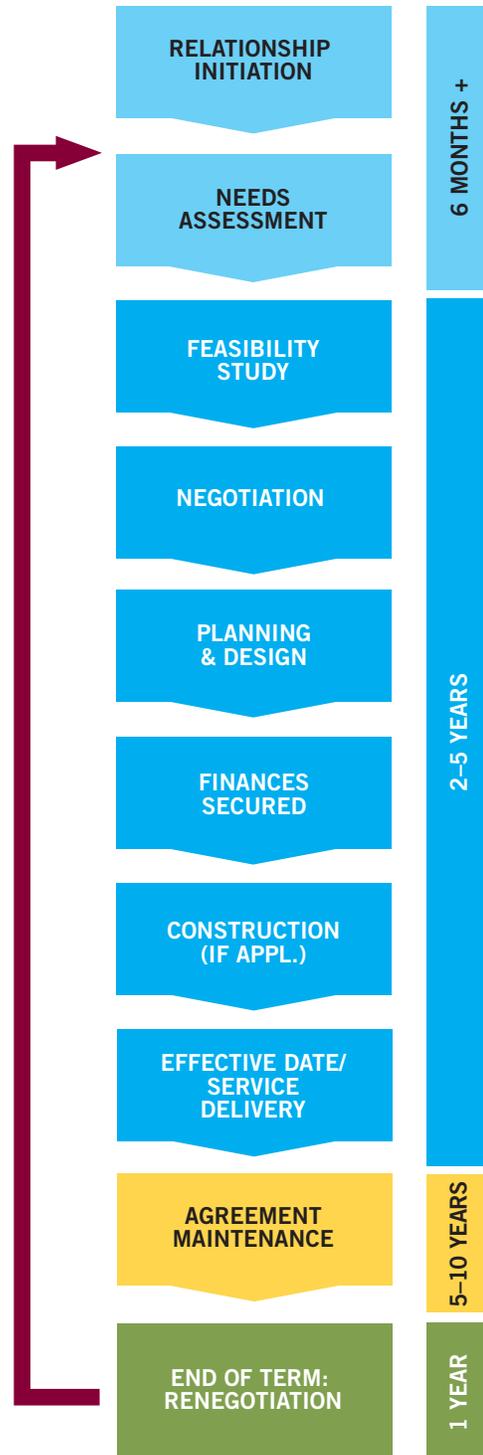
This unit provides a guide to the stages of service agreement development, from feasibility study to the development of appropriate legal agreements, maintenance and renegotiation of agreements. A guide through these processes concludes with two case studies. Seven service agreement templates are provided 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**).

