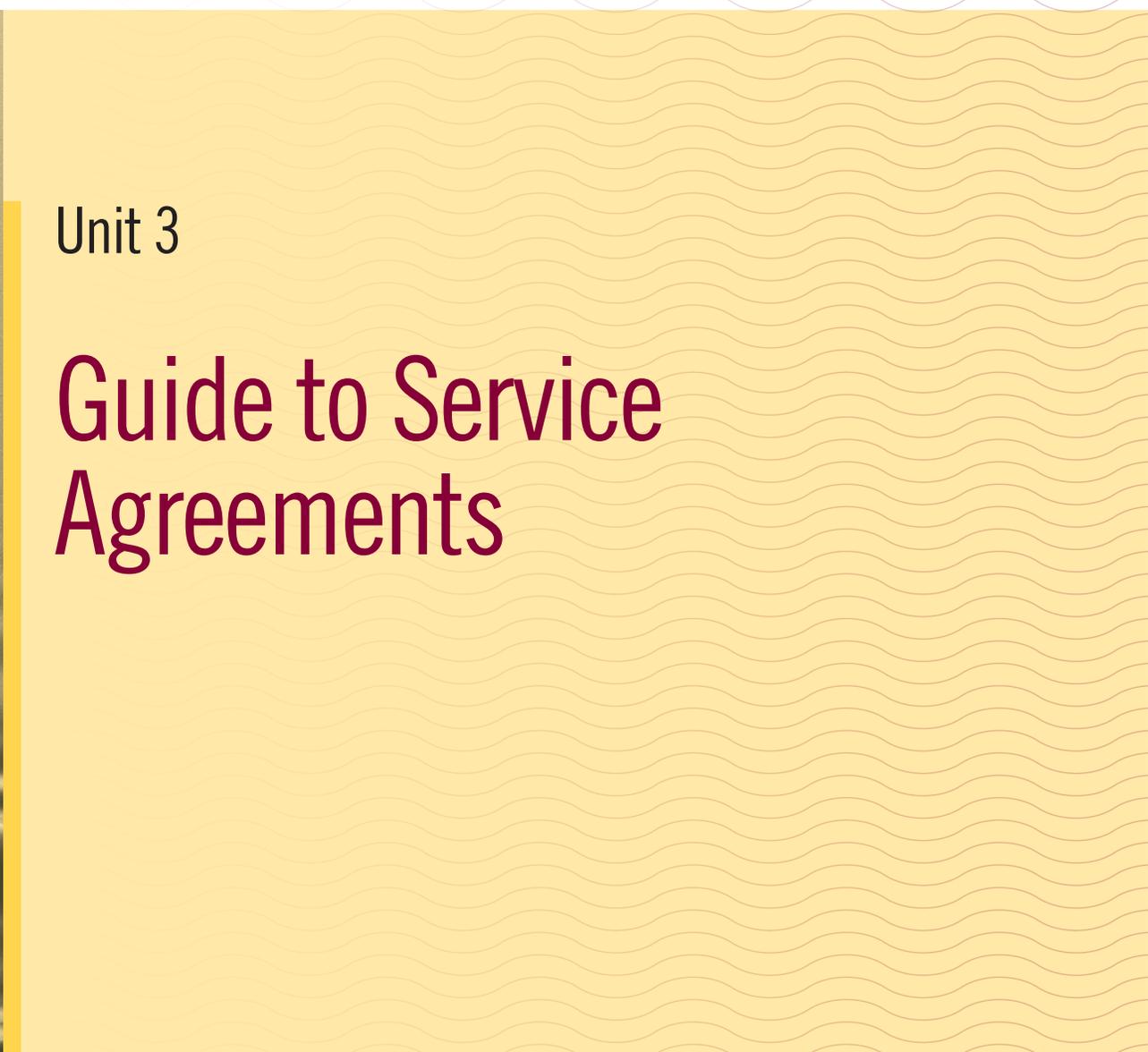
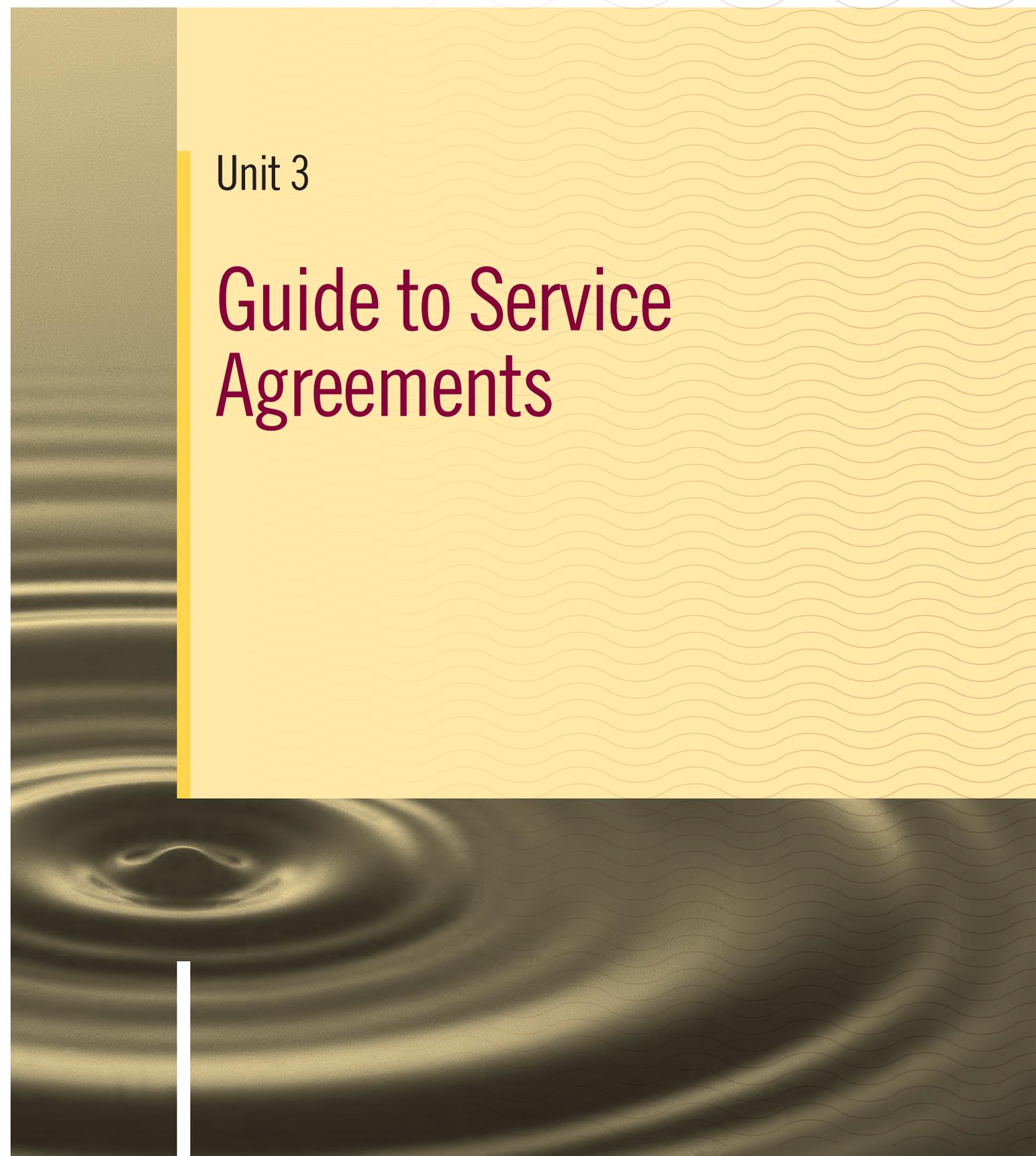




Unit 3



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?

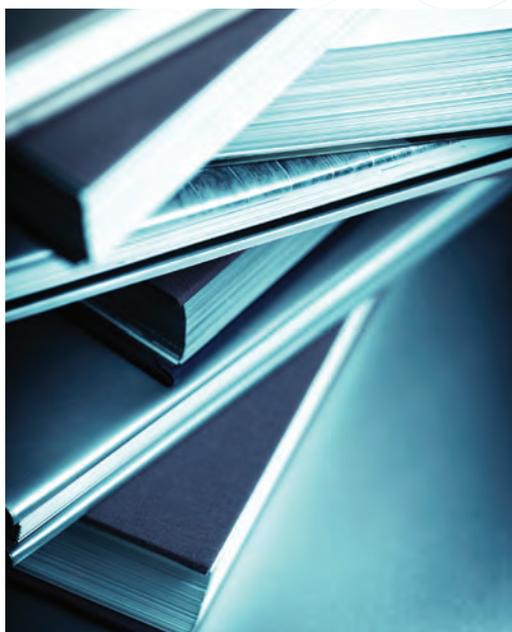
By providing this information in a feasibility study, both parties and the potential funders of the projects will be able to determine the following:

- 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** and the templates found on the **service agreement template CD**.

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** and with the **templates found on the service agreement templates CD**.



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** and on the **service agreement templates CD**.

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)



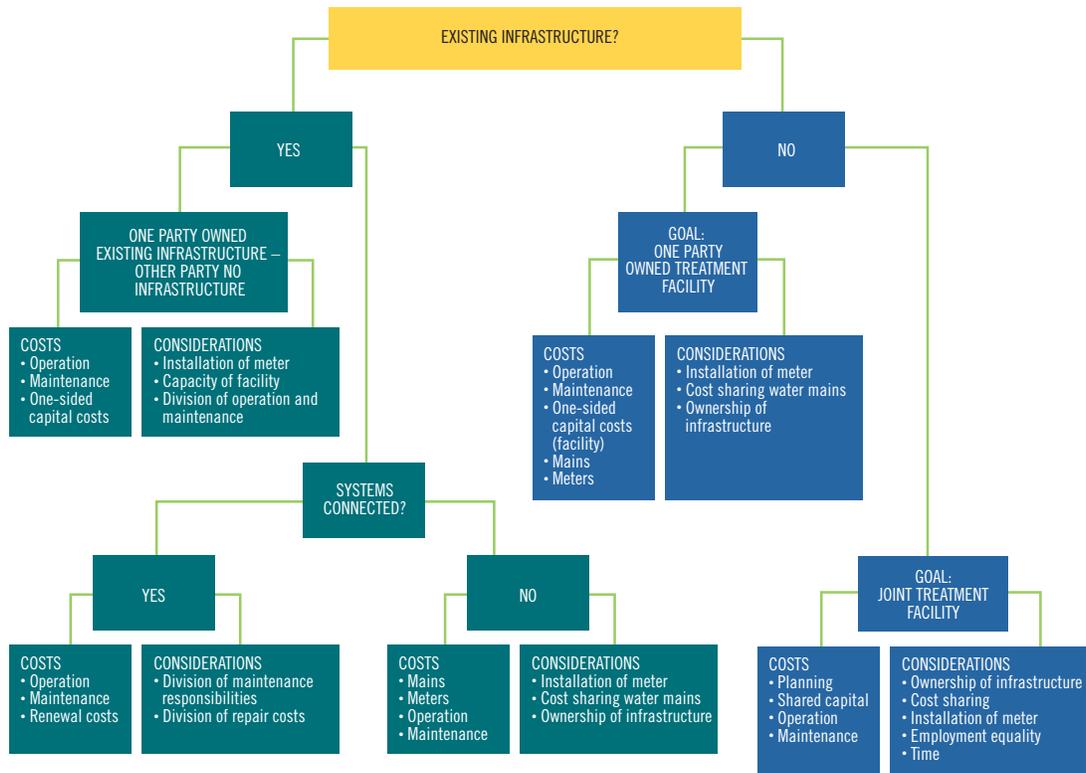
- Regulatory changes (e.g., legislated modifications to existing infrastructure standards and business practices)
- Consumption rates, residential versus business
- Planning costs
- Source water protection
- Local tax subsidization of services

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 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.

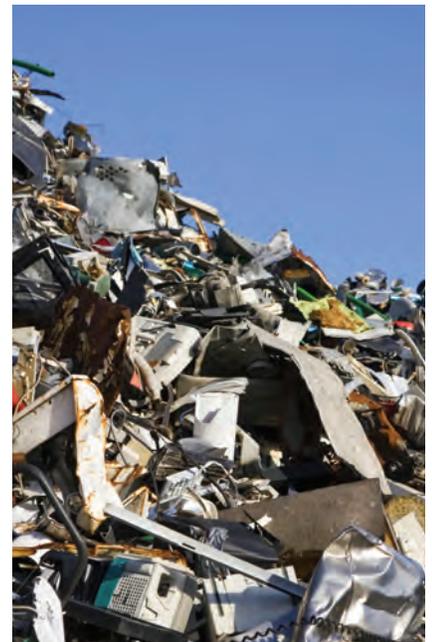


Table 1: Service agreement renegotiation tool

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, services, agreement, etc.</i> - 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	<ul style="list-style-type: none"> - Additional charges that may occur such as a one-time capital contribution or additional fees per household 		
Bill payment	<ul style="list-style-type: none"> - 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	<ul style="list-style-type: none"> - 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	<ul style="list-style-type: none"> - 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	<ul style="list-style-type: none"> - If infrastructure was constructed, who owns which portions of the infrastructure - Schedules of maps could be added to clarify 		
Repair	<ul style="list-style-type: none"> - 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	<ul style="list-style-type: none"> - Outlines to what extent the service provider may access the service receiver’s land (e.g., in the case of fire inspection) 		
Liability	<ul style="list-style-type: none"> - A statement removing liability for fluctuations in service levels and quality from the service provider 		
Notice	<ul style="list-style-type: none"> - 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	<ul style="list-style-type: none"> - A statement indicating the agreement is to be interpreted as a whole, not in sections 		
Headings	<ul style="list-style-type: none"> - A statement indicating that the headings used in the agreement simply help organize the agreement, rather than helping interpret the agreement 		
Amendment	<ul style="list-style-type: none"> - Outlines the procedure for amending the agreement before the end of term 		
Assignment	<ul style="list-style-type: none"> - Whether the agreement can be assigned to new parties, such as in the case of amalgamation 		
Enurement	<ul style="list-style-type: none"> - A statement ensuring the agreement is binding on successive governments until the end of the agreement term 		
Severance	<ul style="list-style-type: none"> - The procedure and effect of removing a single clause from the agreement when it is deemed no longer valid 		
Waiver of breach	<ul style="list-style-type: none"> - 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	<ul style="list-style-type: none"> - 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.

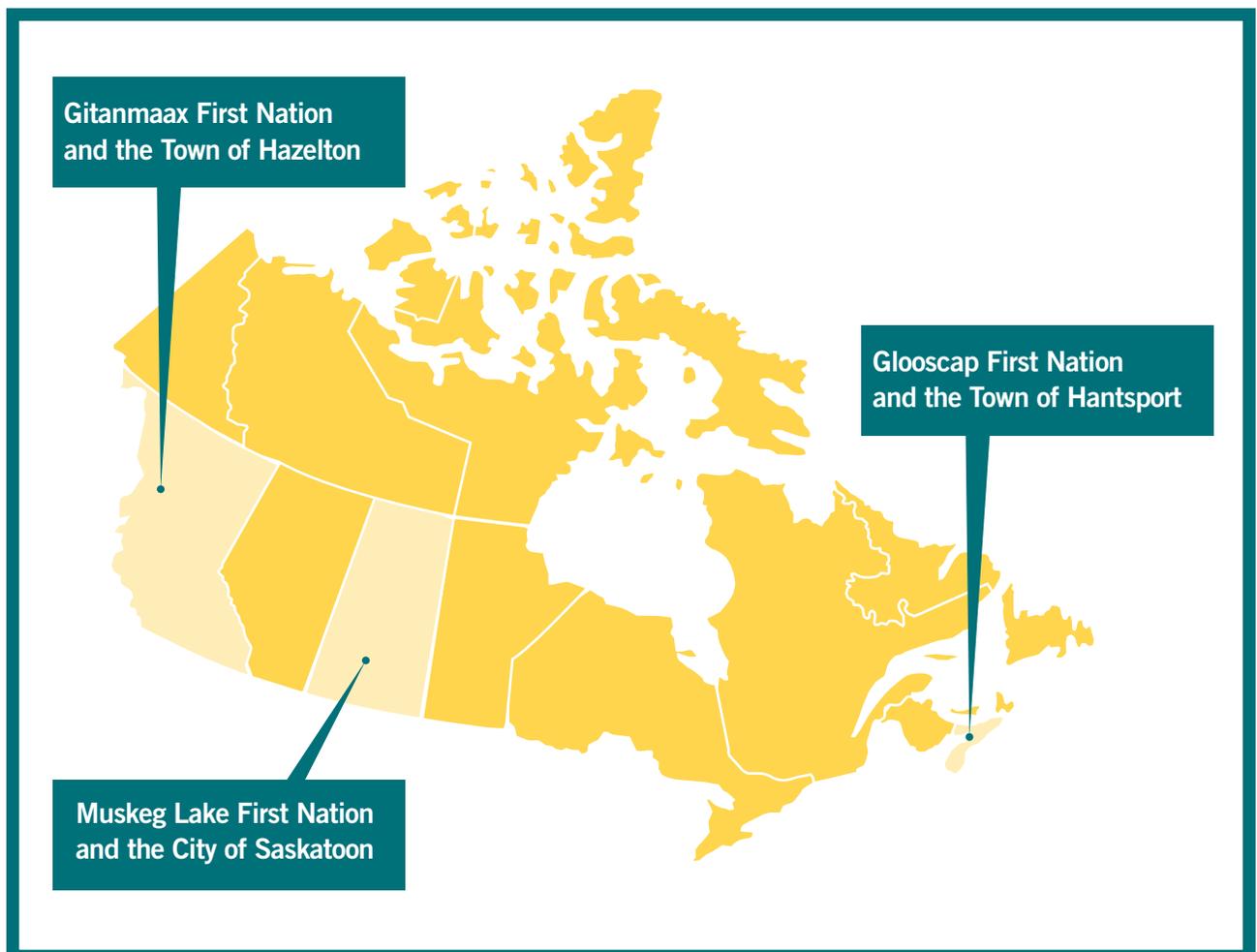
The CIPP service agreement templates for animal control, solid waste, fire protection, transit, and comprehensive agreements include the establishment of an annual fee that is revised each year to meet changing demands within a five- or ten-year term. In the case of water and wastewater, ideally, these 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, unserviced 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.

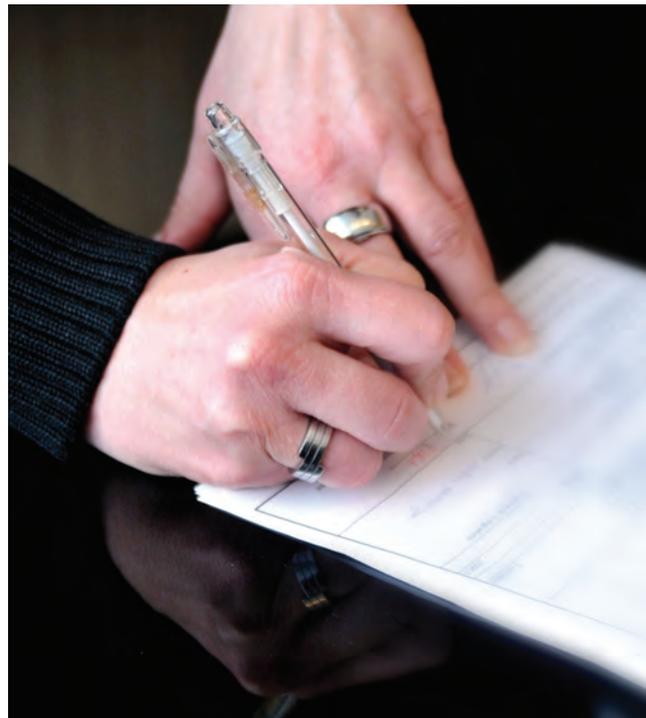
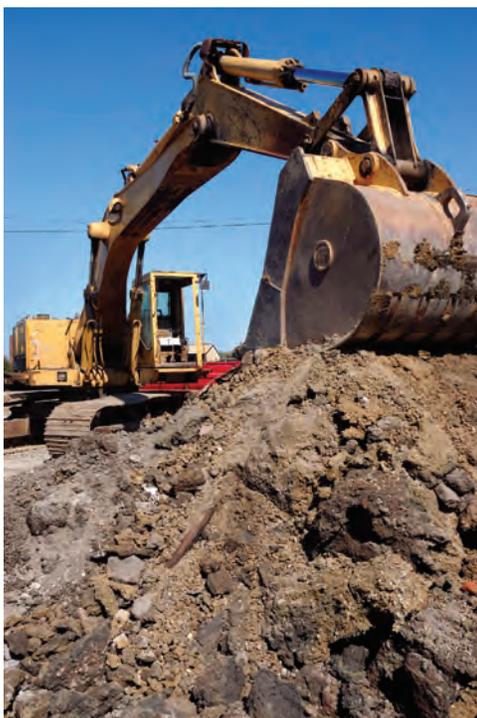
Muskeg Lake First Nation and the City of Saskatoon have built a model for urban reserve development and servicing that will be beneficial to other communities hoping to enter into the same type of agreement. The strong, trusting relationship that underlies the agreements has been critical for the continuing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

Jeffery 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 are available in Word format on the attached CD and 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.