

Developing Municipal Type Service Agreements

A Handbook for Garbage Collection and
Disposal Agreements



Introduction

◆ using this handbook

Municipal type service agreements (service agreements) have been, and continue to be, important mechanisms for communities to access affordable and sustainable municipal services such as water, sewer, fire protection, and garbage collection.

This is a handbook to support you in developing an agreement for the provision of garbage collection and disposal services to your community.

Developing a service agreement is a staged process. This handbook can be used when you're ready to develop and negotiate the terms of your agreement. This handbook often refers to agreements between two communities, and is written from the perspective of a local government providing services to a neighbouring First Nation as this is the most common scenario. Increasingly, First Nations are taking on the role of being the service provider. The content in this handbook remains relevant to these scenarios if the reader considers the First Nation in roles that mention the municipality. Similarly, this handbook can also be used to develop service agreements between a community and a private contractor.

before you use this handbook

Diving right into developing terms of a service agreement is often not the fastest way to get to a finished agreement. Developing the agreement will often go much more smoothly if you do the necessary preparation work first.

You're ready to use this handbook if you:

- ◆ Have an understanding of what your service needs are, for today and for the future.
- ◆ Have identified that a service agreement is the most effective way of meeting these needs.
- ◆ Have developed a memorandum of understanding and/or principles for working together at a government-to-government level.
- ◆ Have determined that service delivery through a service agreement is feasible, and what (if any) infrastructure is required to enable service delivery (see special note at the end of this section).
- ◆ Have done some preparation to understand the key issues and priorities of neighbouring community, that might impact their ability or interests to provide service (if they are providing the service).

how to use this handbook





Every service agreement contains a set of core components, or contract terms, that are specifically tailored to reflect the agreement for service delivery between the two communities.

This handbook identifies:

- ◆ The 11 service agreement contract terms that are common to the majority of service agreements. A list of other common contract terms, and brief definitions for these terms have been included in the Appendix.
- ◆ The decisions that will need to be made for each term, in order to write it into your service agreement.
- ◆ Some important things to consider before making the decisions.
- ◆ Some example contract terms that can be used or modified directly in your service agreement.

A blank template has been included at the end of this handbook, which can be filled in using example terms after you have worked through the key decisions.

step-by-step

- STEP 1.**  **Define the process.** Work with your service agreement partner to define a process for drafting the service agreement for negotiation. How will key decisions be made? Will decisions be discussed before writing the first draft of the agreement? (This is recommended.) Who will write the first draft? What will be the process for negotiation? Share this handbook with your service agreement partner if it is helpful.
- STEP 2.**  **Make the key decisions.** Work through each of the key decisions for each of the service agreement terms, ensuring to discuss the considerations. Document and communicate the key decisions made, even if these are just opening points for further negotiation. Ideally, work back and forth with your service agreement partner to get to a set of key decisions that you agree on.
- STEP 3.**  **Draft the agreement.** After making the key decisions with your service agreement partner, select sample contract terms to place into the blank template. Modify the examples as necessary to reflect your situation.
- STEP 4.**  **Legal review.** Your service agreement should be reviewed by legal counsel to ensure that it includes the necessary terminology, includes appropriate clauses about liability, and does not create any unintentional conflicts.

Joint investment in infrastructure: a special note

New infrastructure or infrastructure upgrades may be required to enable garbage collection and disposal services service delivery to be provided from one community to another. These upgrades may include landfill upgrades, construction of transfer stations, or purchase of trucks and bins. Any infrastructure or equipment upgrades should be identified before developing a service agreement, as part of the feasibility assessment stage. In some cases, infrastructure upgrades can be designed to benefit both parties, in which case the costs may be shared.

The arrangements for cost sharing vary greatly from community to community, but typically reflect the principle that costs are shared in proportion with the benefit received.

How should investments in infrastructure be reflected in service agreements? One approach is to have a separate contract agreement for the infrastructure investment (keep the service agreement simple by keeping the details of the investment out of it), and acknowledge the infrastructure investment in the service agreement so that future staff and elected officials administering the agreement know that investment in infrastructure was made. Investment in infrastructure may be acknowledged in these contract terms:

- ◆ Up front, in the introductory statements (e.g. “Whereas investment in infrastructure was made by ___ to facilitate delivery of services...”).
- ◆ In Levels of Service, to specify the capacity that the upgraded infrastructure has been designed for, and the portion of that capacity available to the party receiving the services.
- ◆ In Roles and Responsibilities, to clarify who owns and maintains the new or upgraded infrastructure.
- ◆ In Termination of the Agreement, to outline conditions for terminating the agreement that protect the up-front investment made in infrastructure upgrades.

The Core

◆ core contract terms of a service agreement

1.0 TERM OF AGREEMENT

2.0 RENEWAL TERMS

3.0 SERVICE AREA

4.0 LEVEL OF SERVICE

5.0 ROLES AND RESPONSIBILITIES

6.0 RATES AND PAYMENTS

7.0 SUSPENSION AND TERMINATION

8.0 NOTIFICATION

9.0 GROWTH AND DEVELOPMENT

10.0 DISPUTE RESOLUTION

11.0 COMMUNICATION

1.0 | TERM OF AGREEMENT

what it is

The term of agreement is the duration of the contract.

why it's important

- It determines how long of a commitment you and your service provider are agreeing to (to receive / provide services).



key decisions

- How long do you want your agreement to be for?
 - ◆ Short term (1-2 years)
 - ◆ Medium term (3-5 years)
 - ◆ Long term (Greater than 5 years)



key considerations

- Garbage collection and disposal agreements tend to be for a shorter period of time than other service agreements, typically one to two years.
- A shorter agreement gives greater flexibility (to try out provider(s), renegotiate terms, etc.), while a longer agreement provides more stability and certainty that your service needs will be taken care of for the foreseeable future.
- Longer term agreements are preferred if there has been investment in infrastructure or equipment.
- Agreements with longer terms may contain schedules that are updated more frequently (e.g. rates, service area, etc.).



example contract terms

- ① **ONE YEAR** | “This Agreement will commence on the 1st day of January 2016 and will remain valid until the 31st day of December, 2016.”
- ② **TWO YEARS** | “This term of Agreement shall begin January 1st, 2016 and expire December 31st, 2018.”

2.0 | RENEWAL TERMS

what it is

Renewal terms make it clear whether the agreement can be renewed, and the conditions for renewing it.

why it's important

- It allows the agreement to be renewed or extended for an additional term.
- It reduces the administration time and effort to develop new agreements.
- It maintains consistency in the terms of the agreement.



key decisions

- Can the agreement be renewed?
 - ◆ Yes
 - ◆ No
- Who may renew the agreement?
 - ◆ First Nation (only)
 - ◆ Service provider (only)
 - ◆ Both parties (mutual agreement)
- What needs to happen for the agreement to be renewed?
 - ◆ Advanced notice
 - ◆ No action necessary
- For how long can the agreement be renewed for?
 - ◆ Same period as original agreement
 - ◆ Other, as agreed by the parties
- How many times can the agreement be renewed for?
 - ◆ Renewal limits
 - ◆ Unlimited



key considerations

- Mutual agreement terms are preferred (i.e. where both parties have to agree to renew), as it ensures both parties are on the same page and are committed to the relationship.
- If the agreement is functioning to the satisfaction of both parties, it may be desirable to renew the agreement, rather than start over with a new one.
- Upon the renewal of any agreement, it is beneficial to review the terms and make any necessary adjustments prior to renewing. Consider including a clause in the original agreement to make this clear.



example contract terms

- ① “This term may be extended a further two (2) year term upon mutual agreement.”

3.0 | SERVICE AREA

what it is

Service area identifies what specific single family or multi-family residences; community facilities; commercial, industrial, or institutional buildings; or areas in the community will receive the garbage collection services.

why it's important

- Ensures the First Nation, residents, and the service provider are all clear on who will be (or won't be) receiving service.



key decisions

- What properties or areas of your community require service?
 - ◆ All houses and buildings
 - ◆ Certain houses and buildings
 - ◆ Other areas without houses or buildings (e.g. campground) on Reserve
- How many houses and / or buildings are there in the service area?
- Where are they located?
 - ◆ Reserve names
 - ◆ Unit addresses
 - ◆ Reserve / unit map
- Are there any buildings or areas that are excluded?



key considerations

- It is important to define as clearly as possible what areas, buildings, and/or units will be receiving the services.
- Your service agreement should include a map or specifically listed addresses.
- You may want to include maps or addresses in a schedule to the agreement, which will make it easier to update without changing the rest of the agreement.



example contract terms

- ① “The First Nation wishes to obtain curbside collection service for residential garbage, recycling and yard waste for residents on their reserve lands.”
- ② “The First Nation wishes to obtain residential garbage collection from central bins, as identified in Schedule __ to this agreement.”
- ③ “The First Nation shall provide to the [Municipality] copies of a plan showing the location of all streets and their names, all premises and their numbers, where garbage is to be collected within the Reserves.”
- ④ “The First Nation will notify the [Municipality], in writing before the first day of [Insert Month(s)] in each year of this agreement, of any changes applicable to the plan, (i.e. location and address of units to be added to, or deleted from, the plan as required).”

4.0 | LEVEL OF SERVICE

what it is

Level of service clearly states the qualities of the service being provided and paid for.

why it's important

- It is the reason why the service agreement is in place (i.e. to provide and receive a service).
- It determines that amount and quality of service (i.e. level) that will be provided and received.
- It can vary based on each party's ability to pay for or provide service, or other factors.



key decisions

- Who will be providing the service?
 - ◆ Municipality or Regional District
 - ◆ Private Contractor
 - ◆ Other First Nation
- What services do you require?
 - ◆ Collection only
 - ◆ Collection and disposal
- What materials do you need to be collected and disposed of?
 - ◆ Garbage
 - ◆ Recycling
 - ◆ Yard waste
 - ◆ Large items (e.g. appliances, furniture, etc.)
 - ◆ Other

key decisions

- What materials are permitted and not permitted?
 - ◆ Residential / office-type garbage
 - ◆ Yard waste / oversized materials
 - ◆ Hazardous materials
 - ◆ Industrial / commercial waste
- How will the materials be stored for collection?
 - ◆ Individual, household bins
 - ◆ Large, collection bins
 - ◆ Combination
- How often do you require service?
 - ◆ Weekly
 - ◆ Bi-monthly (every other week)
 - ◆ Once per month
- Is the same frequency of service required for all units, buildings, locations within the service area?
 - ◆ Same for all uses and locations
 - ◆ Depends on type of use / location
- Are there limits to the amount of service? What about excess?
 - ◆ Volume / bin limits
 - ◆ Additional charges for exceeding limits
- Where will the garbage be disposed or the recycling be deposited?
- Who will maintain the garbage and/or recycling bins?
 - ◆ the First Nation
 - ◆ the service provider



key considerations

- Service providers include both municipalities and private contractors. Private contractors are more common for garbage collection / disposal than for other MTSA-type services.
- Arrangements with service providers can vary. For example, service can be provided by the municipality itself (i.e. municipal workers), by the municipality via a private contractor, or directly by a private contractor.
- Most communities require both collection and disposal services. ‘Collection’ typically refers to the pick-up and transport of waste to the disposal facility (and associated costs), while ‘disposal’ typically refers to the depositing / storage of waste in the facility (and associated costs / ‘tipping fees’).
- Depending on the arrangement, one service provider may be able to provide both collection and disposal services or separate providers and agreements may be required for each service. For example, if a private contractor is providing collection, a separate agreement may be required with the municipality where the garbage is disposed.
- Your agreement should clarify who will own and maintain garbage and/or recycling bins.
- Depending on the facilities available, there may be some materials that the service provider is unable to handle. It is important be clear what materials are permitted or prohibited.
- Some municipalities have specific recycling or banned materials bylaws, which can impact how services are provided and paid for. If this is the case, you may need to consider if you will establish recycling services in your community.

key considerations

- Frequency of pickup should be aligned with the amount of waste being generated, so bins aren't overflowing or bins aren't empty.
- Garbage can be stored in smaller / individual bins (i.e. at each house or building) or in larger bins at a collective location.
- Determining the storage / collection process should balance convenience and cost. It will likely cost more for pick-up at each home or building, however it will be less convenient for residents to transport / deposit household garbage at a centralized location.
- The service provider generally has a limit to how much they are able to pick up on their rounds. Anything over these limits are usually subject to fees, or they might not be picked up at all. It is common to see a limit on the amount that can be collected in a given period.
- Ensure that your garbage is taken to a licensed and permitted landfill or transfer station.
- Options for excess waste can include the purchase of tags or stickers or access to a tipping station. Tags or stickers are affixed to excess bags of garbage on pick-up day. The tags or stickers on the bags indicate that the bag has been paid for and that collection crews can pick up the bag. Excess bags without stickers or tags may be left at the curb. For items that are not eligible for pick up (e.g. large items), it may be possible for residents to take them to a tipping station, separately.



example contract terms

TYPE / FREQUENCY OF SERVICES

- ① “Whereas the parties have agreed that PARTY A will provide weekly garbage collection for PARTY B.”
- ② “Curbside collection of Residential Garbage, Recyclables and yard Waste will be undertaken once per week by the Contractor.”
- ③ “The contractor shall collect household waste once a week, First Nation office twice a month.”

VOLUME LIMITS / EXCESS

- ① “A maximum of two (2) 80L garbage containers or two garbage bags (66cmx91cm), each container/bag not to exceed a weight of 20kg or Residential Garbage.”
- ② “Up to 10 clear bags/appropriately labelled containers of Yard Waste.”
- ③ “The amount of garbage collected per household is restricted to one can per week. Extra cans per household will be collected if they are accompanied by valid garbage tags. Tags can be purchased from SELLER for \$3 each.”
- ④ “In the event that the First Nation requires to rent additional totes from the [Service Provider], a rental charge of \$2 per month will be charged to the First Nation for each toter provided.”

PERMITTED / PROHIBITED MATERIALS

- ① “Only ‘Permitted Solid Waste’ within maximum size, weight and height requirements will be collected. ‘Prohibited Waste’ and ‘Hazardous Waste’ will not be collected.”

5.0 | ROLES & RESPONSIBILITIES

what it is

Roles and responsibilities clearly state what each party is responsible for under the agreement.

why it's important

- Ensures that all parties know what they are responsible for so that the agreement functions as it's intended.
- This is especially important for new staff who are tasked with administering an agreement that was developed before them.
- Can significantly impact level of service and costs.



key decisions

- What are the responsibilities of the First Nation? Common responsibilities include:
 - ◆ Notification [see Section 8, Notification]
 - ◆ Liability insurance
 - ◆ Payment on-time and in-full
 - ◆ Access to reserve and pick-up areas
 - ◆ Maintaining bins and storage conditions
 - ◆ Updating service area
- What are the responsibilities of the service provider? Common responsibilities include:
 - ◆ Service provision on-schedule and in-full
 - ◆ Provisions of equipment and staff (vehicles, drivers, etc.)
 - ◆ Invoicing
 - ◆ Notification [see Section 8, Notification]
 - ◆ Liability insurance

key considerations

- Both parties in the agreement should have insurance to protect against accidents or other unforeseen events.
- If not already included in Level of Service provisions (Section 4, Level of Service), Roles and Responsibilities should include conditions for who is responsible for supplying bins, when invoicing is to occur.



example contract terms

- ① “During the said term the [Service Provider] shall be in strict accordance with the full intent of the terms and conditions set forth in this agreement and shall:
 - i. Complete all services as outlined under this agreement in conjunction with the contractor;
 - ii. Guarantee all services performed during the term of this agreement, however, the [Service Provider] has the right not to provide service to a particular unit or units if they deem safe access is obstructed for any reason, and
 - iii. May undertake at the request of the First Nation and upon approval by the [Service Provider], additional services that may be required.”
- ② “During the said term the First Nation shall be in strict accordance with the full intent of the terms and conditions set forth in this Agreement and shall:
 - i. Remove snow from roadways or in front of structures so that access is not obstructed; and
 - ii. Ensure that waste collection vehicle has unrestricted safe access to all residential units for collection of the specified collection day”
- ③ “In an attempt to reduce human interaction with wildlife, every person shall place Residential Garbage in sealed containers of a type and size acceptable to PARTY A.”

6.0 | RATES & PAYMENT

what it is

Clearly states the cost of service (rates) and procedures for payment.

why it's important

→ Explains how costs are determined / what you're paying for and allows for budgeting.



key decisions

RATES

- What is the structure of the rate for service? How is the total charge calculated?
 - ◆ Flat rate per bin / unit / building
 - ◆ By volume
 - ◆ By frequency
 - ◆ Flat rate for service area
- Are tipping fees included or separate?
 - ◆ Included
 - ◆ Separate
- Who will supply and maintain the bins and what will the cost be?
 - ◆ First Nation / members (own cost)
 - ◆ Service provider (monthly rental fee)
- How does the rate compare with similar municipal users?
- Will fees stay the same for the duration of the agreement or will they increase each year?

key decisions

PAYMENT

- When is invoicing to occur?
 - ◆ Monthly
 - ◆ Quarterly
 - ◆ Annually
- When must payment be received?
 - ◆ 30 days
 - ◆ Other
- How must payment be made?
 - ◆ By cheque
 - ◆ Electronically



key considerations

- Flat rates allow for predictability of costs and revenues for both parties.
- Depending on your location, you may have more than one service provider in your area, so it may be beneficial to compare options and costs. Even if there is only one service provider, it may be helpful to compare the costs with other users that are receiving the same services (e.g. how much are residents of the municipality paying for garbage collection and disposal?). These costs may not always directly align, however they can serve as a good benchmark for negotiation.



example contract terms

COLLECTION / TIPPING FEES

- ① “On or before January 1st of each year, the First Nation will pay the [Service Provider] an ‘Annual Base Fee’, which will be calculated as \$60 for each First Nation member living within First Nation boundaries in that year.”
- ② “In addition to the Annual Base fee, the First Nation and its members will pay tipping fees for all Permitted materials disposed of at COLLECTOR Facilities, which said tipping fees will be calculated and paid in accordance with the COLLECTORS policies and procedures then in place (“Tipping Fees”).”
- ③ “PARTY A will provide weekly residential garbage collection services for PARTY B at a cost of \$20 per month per household. The cost for seniors’ households shall be \$10 per month per household.”

PAYMENT SCHEDULE

- ① “PARTY A will invoice PARTY B \$1000 once per month for the duration of the contract. The invoice will be dated for the 1st of the month and will be for services received in that month.”
- ② “The flat fee shall be paid in four equal installments each year.”

RATE INCREASES

- ① “...a flat fee of:
 - ◆ two hundred dollars (\$200) per household for 2016,
 - ◆ two hundred fifty dollars (\$250) per household for 2017,
 - ◆ three hundred dollars (\$300) per household for 2018.”

7.0 | SUSPENSION & TERMINATION

what it is

Suspension / termination terms identify the conditions and procedures for temporarily stopping services (suspension) or ending an agreement before the end of its term (termination).

why it's important

- Allows parties to take action if agreement terms are not met.
- Makes the suspension or termination process clear and fair to both parties.



key decisions

- Who can suspend or terminate the agreement?
 - ◆ First Nation (only)
 - ◆ Service provider (only)
 - ◆ Either party
- Under what conditions can services be suspended?
 - ◆ With cause (failure to meet terms of agreement)
 - ◆ What are the conditions? (e.g. failure to meet roles and responsibilities)
 - ◆ Without cause (one party no longer wants to receive / provide services)
- Under what conditions can services be terminated?
 - ◆ With cause (failure to meet terms of agreement)
 - ◆ What are the conditions? (e.g. failure to meet roles and responsibilities)
 - ◆ Without cause (one party no longer wants to receive / provide services)
- What are the procedures for suspension / termination?
 - ◆ What type of advanced notice is required prior to termination of the agreement?
 - ◆ 60 days
 - ◆ 120 days
 - ◆ Other
 - ◆ How is notice given?
 - ◆ [see Section 8, Notification]



key considerations

- Suspension provides an opportunity for the violating party to correct the issue(s) and preserve the agreement. It serves as an intermediate step between service provision and termination.
- It is important that the conditions and procedures for suspension and termination are clearly defined and that advanced notice required to ensure the party in violation has an opportunity to either remedy the issue (if in violation) or make alternative arrangements (if service is still required).
- Suspension and termination require sufficient notice be provided, as per the terms of the agreement. The process for notification is outlined in Section 8, Notification.
- The period of advanced notification prior to termination typically increases based on how long it would reasonably take to make alternate arrangements for service provision.
- Termination clauses should identify if capital contributions or rates paid in advance will be reimbursed on a pro-rated basis.



example contract terms

- ① “Payment must be received within [X] day of receipt of invoice, or service will be suspended until payment is made in full.”
- ② “Wherever [Party B] fails to perform or observe any of the covenants, agreements, provisions, conditions or provisos contained in this Agreement on the part of the [Party B], and the failure continues for or is not remedied within [Number] days next after the giving of written notice by [Party A] to [Party B], [Party A] may terminate this Agreement, with cause, on immediate written notice.”
- ③ “Either party may terminate this Agreement by giving thirty days (30) written notice to the other party”
- ④ “This Agreement may be terminated by either party, without cause, by providing the other party with Sixty (60) days written notice.”

8.0 | NOTIFICATION

what it is

Notification outlines when each party needs to contact one another and the procedures for doing so.

why it's important

- It ensures clear communication between parties and a written record of key decisions, changes, issues, etc.



key decisions

- Under what conditions is notice required?
 - ◆ Amendments to agreement or schedules
 - ◆ Changes in service area [see Section 5, Roles & Responsibilities]
 - ◆ Invoicing [see Section 5, Roles & Responsibilities]
 - ◆ Renewal [see Section 2, Renewal Terms]
 - ◆ Violations
 - ◆ Suspension / Termination of Services [see Section 7, Suspension / Termination]
 - ◆ Other
- How must notice be given?
 - ◆ In person
 - ◆ Mail
 - ◆ Email
- At what point is notice assumed to have been received?
 - ◆ Upon confirmed delivery
 - ◆ 5 business days after mailing
 - ◆ Other



key considerations

- Notice provisions are more commonly included in agreements with municipalities, however it is important that all agreements have clear notification provisions to ensure clear communication and a written record of key decisions.
- Please refer to other relevant sections (Section 5, Roles & Responsibility; Section 7, Suspension & Termination; Section 2, Renewal Terms, etc.).



example contract terms

① “No amendment of or departure from the terms and conditions of this Agreement will become effective unless evidenced in writing and signed by both parties.”

② “Except as otherwise specifically provided for in this agreement, whenever it is required or desired that either party shall deliver or serve a notice, invoice or payment on the other, delivery or service shall be deemed to be satisfactory and deemed to have occurred when:

- i. That party has been served personally, on the date of service; or
- ii. Mailed by prepaid mail, on the date received or on the fifth business day following receipt of the mailing by any Canada Post Office, whichever is the earlier, provided that in the event of interruption of mail service, notice shall be deemed to be delivered only when actually received by the party to whom it is addressed, so long as the notice is addressed as follows:

To the First Nation: [Insert mailing address]

To the Service Provider: [Insert mailing address]”

9.0 | GROWTH & DEVELOPMENT

what it is

Growth and development establishes the conditions under which additional units, buildings, and areas can be added to the service agreement.

why it's important

- It identifies a process for figuring out if the growth and development can be serviced with the existing system, or if additional capacity is required.
- It helps both parties plan for the future.
- It ensures that future buildings, residents, or areas in the community receive the services they need.



key decisions

- Does your community anticipate future growth and development that might require the services?
- Can the service provider accommodate additional growth and development? How much additional service can be provided – are there limits?
- Will existing terms (i.e. rates, volumes, etc.) remain the same for new units / buildings / areas or will they be different?
- What is the process for requesting additional services?
 - ◆ How much advanced notification is required by the First Nation to inform the service provider that additional service is required?
 - ◆ What information does the service provider require to make a decision? How long does the service provider have to respond?
 - ◆ Under what conditions may the service provider refuse additional service?
 - ◆ Under what conditions may the First Nation contract a new or additional provider to meet its increased needs?



key considerations

- Accommodating minor growth and development (and the additional users / garbage) is likely to not be an issue for garbage collection and disposal service providers, however schedules or frequency of service may require adjustment.
- Accommodating major growth and development to existing uses (i.e. residential, community uses) or new types of uses (i.e. industrial, commercial uses) may be more difficult to accommodate and may require re-negotiation of the agreement.
- When the service area is changed, the maps or lists of addresses in your agreement will need to be updated.



example contract terms

- ① “The First Nation shall advise the [PROVIDER] of any planned growth or development, so that the [PROVIDER] can assess the ability to provide services and update the service area in the service agreement.”

10.0 | DISPUTE RESOLUTION

what it is

Establishes procedures for when there is a disagreement between the parties.

why it's important

- It helps ensure that disagreements are resolved in a fair and balanced manner, so that both parties may move forward.



key decisions

- Who will arbitrate the dispute?
- What is the process / timeline?



key considerations

- Dispute resolution terms are not always included in agreements, however such terms (even basic ones) are important to ensure a strong, clear, and functional agreement.
- Disputes should be resolved by a neutral arbitrator.



example contract terms

- 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."
- ② "In the event that the parties fail to resolve matters, the parties shall seek a settlement of the conflict by utilizing Alternate Dispute Resolution (ADR) Method, and recourse to the Courts shall be a means of last resort, except when public health or safety is concerned."
- ③ "In the event that a conflict is settled by mediation the costs of mediation, the fees and reasonable expenses of the project mediator and any reasonable expenses associated with the conduct of the mediation, shall be shared equally by the parties."
- ④ "In the event that a conflict is settled by arbitration, the arbitrator shall fix the costs of the arbitration in the final award, which costs may include, but are not limited to, the following:
 - i. the fees of the arbitrator;
 - ii. any necessary and reasonable expense incurred by the arbitrator to fulfill the arbitrator's functions;
 - iii. the fees and other necessary reasonable expenses of;
 - iv. the experts appointed by the arbitrator; and
 - v. the witnesses, as approved by the arbitrator;
 - vi. any necessary and reasonable fees, charged or expenses for providing services to the arbitrator or the parties in connection with the arbitration."
- ⑤ "Except for the costs of legal fees and legal expenses of the successful party, the costs of arbitration shall be borne by the unsuccessful party unless the arbitrator considers it appropriate in the circumstances to apportion them between the parties."

11.0 | COMMUNICATION

what it is

The Communication clause states how the parties will continue to formally communicate throughout the life of the service agreement.

why it's important

- Pro-actively planning to meet regularly (once or twice a year) helps to:
 - ◆ Build a working relationship between parties,
 - ◆ Provide an opportunity to coordinate activities,
 - ◆ Pro-actively address issues; and,
 - ◆ Identify practical areas for collaboration.
- Formalizing the commitment to communicate makes sure that it's documented and carried on throughout changes in staff or leadership at either organization.



key decisions

- Who should be meeting?
 - ◆ Operational level staff
 - ◆ Administration
 - ◆ Elected officials
- How often should they be meeting?
 - ◆ Once a year
 - ◆ Twice a year
 - ◆ More frequently

key decisions

- What will they discuss?
 - ◆ General update on administration of the service agreement (Are roles and responsibilities being met? Invoices being paid?)
 - ◆ Coordination of major maintenance activities
 - ◆ Potential upcoming issues or risks
 - ◆ Future growth and development, and the impact on services
 - ◆ Updates to service areas
 - ◆ Updates to rates
 - ◆ Bigger picture opportunities for collaboration
- Is designation of a formal committee required? (e.g. a Solid Waste and Recycling Committee)
 - ◆ Yes
 - ◆ No
- If yes, what is the mandate of the group?
 - ◆ Discuss issues and make recommendations to decision makers
 - ◆ Make decisions



key considerations

- Communication commitments at a government-to-government level are often documented in a Memorandum of Understanding or Government-to-Government agreement, rather than in a service agreement.
- Including a formal commitment to communicate in your service agreement does not replace the need for more frequent, day to day communication as issues come up at an operational level.
- The service agreement may indicate the intent to communicate and reference a separate communication protocol.



example contract terms

- 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."
- ② "The Parties further agree to establish a communications protocol to manage issues arising under this Agreement."
- ③ "The First Nation and the Municipality shall create a Utility Council. Membership shall consist of two staff members from each organization."
- ④ "The Parties shall meet at least once a year."
- ⑤ "The agenda for meetings shall include, at a minimum:
 - ◆ Operational issues
 - ◆ Levels of service
 - ◆ Contract administration
 - ◆ Any potential updates to contract schedules
 - ◆ Infrastructure upgrades that impact the service agreement"

