

Developing Municipal Type Service Agreements

A Handbook for Water and Sewer 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 water and/or sewer 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 water and sewer services to be provided from one community to another. These upgrades may include the construction of a connection to the system, complete with a meter and valve; and upgrades to treatment centers or trunk mains to provide sufficient capacity. Any infrastructure 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 (less than 5 years)
 - ◆ Medium term (5-10 years)
 - ◆ Long term (Greater than 10 years)



key considerations

- A longer agreement provides more stability and certainty that your service needs will be taken care of for the foreseeable future.
- Water and sewer agreements tend to be the longest term agreements of MTSAs due to the significant up front capital costs and the sharing of infrastructure.
- Agreements with longer terms may contain schedules that are updated more frequently (e.g. rates, service, area, etc.).



example contract terms

- ① "The term of this Agreement is for a period of ten years, commencing from the date of this agreement."

2.0 | RENEWAL TERMS

what it is

Renewal terms make it clear that 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.
- Agreements may contain schedules that are updated at the time of renewal (e.g. rates, Development Cost Charges).



example contract terms

- ① "At least one year prior to the end of the term, the Parties will negotiate and make best efforts to reach agreement on an extension or replacement of this Agreement."
- ② "By mutual agreement of the parties, this Agreement may be extended for additional five-year periods."

3.0 | SERVICE AREA

what it is

Service area identifies what specific homes, buildings (including residential, industrial, institutional, and commercial), or geographic areas in the community that will be receiving water or sewer services.

why it's important

- It 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 water and/or sewer services?
 - ◆ All houses and buildings
 - ◆ Certain houses and buildings
 - ◆ Other areas without houses or buildings (e.g. campground)
- 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

- If only bulk water/sewer services are provided, it is sufficient to state that the services will be provided to/from the property line of the Reserve.
- If the service agreement includes more than bulk services, such as operations and maintenance of on-Reserve infrastructure, it will be critical to identify the service area and ensure it is updated as changes occur.
- Your service agreement should include a map of the service area and/or the addresses of all buildings receiving service.
- 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.
- The service area may include buildings that are unoccupied.
- Some agreements may encourage all existing development within the service area to establish connections.



example contract terms

- ① "The Parties have agreed that the City shall as a service to the First Nation, accept, treat and dispose of sanitary sewer discharge from the Serviced Lands, as defined herein and shown on the map attached hereto as Schedule "A"."
- ② "The First Nation will encourage developed lands with existing septic or other sewer systems to connect to the Collection System as soon as possible."

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
 - ◆ Regional Municipality
- What services do you require?
 - ◆ Water
 - ◆ Sanitary sewer
 - ◆ Storm sewer/drainage
- What type of areas require the service?
 - ◆ Residential (member/leased)
 - ◆ Commercial
 - ◆ Industrial
 - ◆ Natural

key decisions

- What are the capacity limits of service you will be receiving (i.e. volumes, flows, pressure, water quality, etc.)?
 - ◆ Volume
 - ◆ Pressure
 - ◆ Flow rate
 - ◆ Other
- Are there limits to the service?
 - ◆ Excludes certain uses (i.e. industrial)
 - ◆ Must meet municipal standards (e.g. effluent standards)
 - ◆ Volume or flow limits
 - ◆ Conservation requirements



key considerations

- Sanitary sewer systems convey residential and commercial sewage for treatment and disposal. They also may accept, treat, and dispose of industrial runoff, under certain conditions.
- Storm sewer systems collect rainwater / runoff and convey it to water bodies. Typically, sanitary and storm systems are separate, however older systems may be combined.
- Water systems provide water for drinking and fire suppression. Not all service agreements will provide adequate flows for fire suppression. Your service agreement should be clear on whether water provision is adequate for fire suppression or not.
- Local governments may have bylaws for source control or water conservation in place. Service agreements may require that First Nations pass bylaws with similar requirements and clarify who has enforcement authority.
- If operations and maintenance responsibilities are included in the service agreement, the agreement should also state the level of service for operations and maintenance activities. This should include:
 - i. Type of services
 - ii. Frequency of services
 - iii. Record keeping
- Levels of service may change if there is a change in the demand due to growth and development. Refer to Section 9, Growth and Development.



example contract terms

SERVICES PROVIDED

- ① "During the Term, the Municipality will provide the following municipal water and sewer services to the Reserve in accordance with the terms and conditions of this Agreement:
 - i. A supply of municipal water to the Reserve through the Reserve Water System; and
 - ii. The collection, conveyance, treatment and disposal of sanitary waste that is discharged from the Reserve through the Reserve Sewer System."
- ② "The City shall make available individual [insert size (e.g. 3/4")] connections to single family dwellings in a number to be negotiated from time to time."
- ③ "During the Term, the Municipality will provide the supply of bulk water services to the Reserve boundary."

VOLUME OF SERVICE

- ① "The Municipality shall permit the discharge of up to ___ cubic meters per day of typical raw domestic sewage at the Point of Discharge. The instantaneous flow shall not exceed ___ L/s at any time."
- ② "The volume and pressure shall meet [insert flow and pressure, note that Municipality is not providing fire flows]."

STANDARD OF SERVICE

- ① "The City shall have the right and discretion to reasonably and as part of the overall operation of the system, control, regulate, and restrict the volume and rate of flow and pressure of water available by the City pursuant to this agreement, so that the rate of flow and pressures remain in line with the City System."

example contract terms

② "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."

③ "The quality and quantity of the Services to be provided by the Municipality under this Agreement will be substantially the same as the quantity and quality of the 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."

LIMITATIONS OF USE

① "The First Nation shall not discharge or suffer or permit the discharge of waste into the Municipality's Sewerage System except for the wastewater from buildings or facilities on the Reserve used for residential, institutional, recreational or commercial purposes. The First Nation shall not discharge or suffer to permit the discharge of any industrial waste or septic tank effluent into the Municipality's Sewerage System."

② "The First Nation will not approve any new light, general or heavy industrial development in the Serviced Lands (as those terms are defined in the City's Zoning By-Laws) unless the effluent from such development meets the standards required by this agreement."

③ "The First Nation shall ensure that wastewater and effluent discharged into the Municipality's Sewerage System under this Agreement is discharged in compliance with all enactments that are applicable with such discharge."

example contract terms

④ "The First Nation will prohibit the connection of any storm drainage or other ground water drainage to the Collection System."

OPERATIONS AND MAINTENANCE

① "The First Nation will ensure that the Collection System is constructed, repaired and maintained in a workmanlike manner to industry standards and complies, with all federal, provincial, and First Nation laws, building codes and regulations."

② "The Municipality shall operate, maintain, and upgrade their system, and take all reasonable actions to supply water at a quality that meets the Canadian Drinking Water Quality Guideline and relevant Provincial Guidelines."

③ "The City will service and maintain as reasonably required, the sanitary sewer system, including sewage treatment and disposal facilities, downstream of the Meter in a manner such that they are capable of receiving, treating and disposing of the Effluent."

④ "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."

⑤ "The Municipality shall supply the First Nation with a written record of completed O&M services provided on a monthly basis along with an annual report of the entire system."

Additional examples of operations and maintenance levels of service are included in Section 5, Roles and Responsibilities.

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 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:
 - ◆ Payment for service, on-time and in-full
 - ◆ Construction, operation, and maintenance of the on-reserve system
 - ◆ Ownership of the on-reserve system
 - ◆ Ensuring off-reserve system upgrades required to provide sufficient service capacity are designed, built, and maintained to municipal standards (this responsibility is often transferred to the municipality, although costs are covered by the First Nation)
 - ◆ Ensuring on reserve system(s) meet and maintain municipal standards
 - ◆ Monitoring use of the on reserve system, taking enforcement action as necessary
 - ◆ Installation of meters at point of connection (if applicable)
 - ◆ Providing Notification [see Section 8, Notification]
 - ◆ Paying for or sharing off-site costs incurred by municipality that directly benefit the First Nation, such as expansion or connection to the existing system
 - ◆ Complying with the general terms and conditions regarding new development [see Section 9, Growth and Development]

key decisions

- ◆ Granting access to the reserve and service areas for maintenance, repair, or inspection purposes (as applicable)
 - ◆ Updating the service area, as necessary
 - ◆ Record keeping and administration (i.e. record drawings)
 - ◆ Complying with other regulations (municipal, provincial, federal)
 - ◆ Liability insurance
- What are the responsibilities of the service provider? Common responsibilities include:
- ◆ Provision of services, in-full, as agreed upon
 - ◆ Construction, operation, and maintenance of off-reserve system to provide the level of service (including asset renewal and replacement)
 - ◆ Ownership of the off-reserve system
 - ◆ Ownership, operation and maintenance of meters at point of connection (if applicable)
 - ◆ Inspections of on reserve system (prior to connection and on regular basis), following protocols
 - ◆ Providing Notification [see Section 8, Notification]
 - ◆ Interrupting service for health and safety purposes [see Section 7, Suspension and Termination]
 - ◆ Reviewing and approving new connections or new infrastructure in a timely manner
 - ◆ Reviewing service area information provided by First Nation
 - ◆ Invoicing
 - ◆ Liability insurance



key considerations

- Due to the large amount of responsibilities associated with water and sewer service provision, it is important to be as clear as possible what each party is responsible for.
- Some First Nations may choose to include the operation and maintenance of on-reserve infrastructure system(s). Some municipalities may be willing to provide operations and maintenance services for a fee.
- Some municipalities may require that the First Nation construct off-site works on municipal land in order to connect the municipal system to the reserve boundary. While the First Nation may help to cover or share in the costs, it is recommended that each party be responsible for constructing works on their own lands.
- Sometimes, during the administration of a long term contract, roles and responsibilities are forgotten and not fulfilled. Reviewing your service agreement annually is a good way to ensure staff members of both parties are familiar with the roles and responsibilities and have fulfilled their requirements.
- Sewer agreements will typically have greater requirements for inspecting and maintaining infrastructure on-reserve than water agreements, because the physical condition of the system and the types of users connected to it have a significant impact on the type and quantity of sewage received by the neighbouring community.



example contract terms

OWNERSHIP

- ① "The First Nation shall maintain ownership of all infrastructure on-Reserve. The municipality will maintain ownership of all infrastructure within municipal boundaries."

ACCESS AND INSPECTIONS

- ① "The City Engineer, or any representative or representatives appointed by it, shall at all reasonable times be permitted complete and unhindered access onto and across the Serviced Lands and the Reserve for the purposes of inspecting and monitoring any portion of the Collection System."
- ② "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 or for the purposes of inspecting the Reserve Systems and ensuring compliance with the terms of the Agreement."

RIGHTS OF WAY AND PERMITS

- ① "The Municipality will be responsible for obtaining all easements, rights of way and approvals required for the construction of the works that will take place on Municipality Lands."
- ② "The First Nation will be responsible for obtaining all easements, rights of way and approvals required for the construction of the works that will take place on First Nation Lands."

example contract terms

NEW SYSTEMS / EXTENSIONS

- 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."
- 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 standards and specifications. The Engineer's certification must be delivered to the 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."

NEW CONNECTIONS

- ① "The First Nation is responsible at its cost for connecting the Collection System of the First Nation to the sanitary sewer system of the City. The connection shall be inspected and approved by the City prior to the delivery of Effluent by the First Nation through the Collection System to the sanitary sewer system of the City."
- ② "All applications for connections to the Municipal Sewer System or Municipal Water System must be in compliance with the applicable portions of [Municipality Water and Sewer Rates, Connection and Regulations Bylaws], as outlined in the attached Schedules."

example contract terms

OPERATION AND MAINTENANCE

- ① "The City acknowledges that the First Nation is not responsible for any costs of repair, replacement, alteration, or maintenance of the water main, water connection, and other water works to the Connection Point, with the City being responsible for that work, and the First Nation acknowledges that the City is not responsible for any costs of repair, replacement, alteration, or maintenance of the private water lines or other water works at or beyond the Connection Point, with the First Nation being responsible for that work."
- ② "The First Nation Infrastructure to be maintained by the Municipality under this agreement shall include [describe infrastructure] located [description of location]."
- ③ "During the Term of the Agreement, the Municipality will provide all necessary repairs and maintenance of the Reserve System, including any preventative maintenance that the Municipality considers to be necessary."

MONITORING AND METERING

- ① "At each location where the Collection System connects to the City sanitary sewer system, the First Nation at its expense will install an appropriately sized sewage flow meter, the specifications of which will be subject to approval by the City Engineer prior to installation. The First Nation will then transfer ownership of the meter(s) to the City, who thereafter will be responsible for reading as well as service and maintenance of the meter(s). The City will provide the First Nation with access to read the meter(s) at all reasonable times at the First Nation's convenience."
- ② "The First Nation shall ensure that every sewage pump or lift station located on the Reserve Systems, together with monitoring and control devices as specified by the Municipality, is installed and maintained to the Municipality's satisfaction, as if the Reserve System were located within the Municipality, and shall permit the Municipality to monitor and control the flow of effluent from the Reserve Systems into the Municipality Systems."

example contract terms

UPDATING SERVICE AREA(S)

① "The First Nation shall give the Municipality maps and other information required by the Municipality in order to enable the Municipality to identify the location of all existing residents, businesses, buildings, roads, and locations which require Municipal Services under this Agreement as they are updated."

COMPLIANCE WITH MUNICIPAL DIRECTION

① "The First Nation will strictly comply with all written directions of the City concerning the Collection System, including making all repairs, alterations, maintenance or interruption to the Collection System directed by the City, to the standards prescribed by the City, to its satisfaction, and within the times directed by the City or, if no time period is given, within a reasonable time of receiving the direction."

COMPLIANCE WITH MUNICIPAL REGULATIONS

① "The First Nation will comply by and take all reasonable steps to ensure compliance by any person receiving the Municipal Services with all the Municipality's relevant Bylaws, including the [list bylaws]."

6.0 | RATES & PAYMENT

what it is

Rates and Payment clearly states the cost of service (rates) and procedures for payment, as well as identifies any additional capital costs for establishing service.

why it's important

- It explains how costs are determined.
- It identifies any major up-front costs.
- It allows for budgeting.
- It clarifies the process for invoicing and payment.



key decisions

RATES

- What is the structure of the rate for service? How is the total charge calculated?
 - ◆ User fee only
 - ◆ Flat rate per building / unit
 - ◆ Flat rate for area as a whole
 - ◆ Consumption fee only
 - ◆ Metered rate per m³ of volume used
 - ◆ Combination of user fee and consumption fee
- What is included in the rate?
 - ◆ Bulk water or sewer services
 - ◆ Operations and maintenance fees
 - ◆ Fee for service items (e.g. inspections, etc.)

key decisions

- Are there additional costs not included in the rate?
 - ◆ Connection fees
 - ◆ Capital costs of system improvements (see Capital Upgrade Costs below)
 - ◆ Fee for service items (e.g. inspections, etc.)
- Are there additional costs not included in the rate?
 - ◆ Connection fees
 - ◆ Capital costs of system improvements [see below]
 - ◆ Additional fees for receiving high-strength effluent
- Will fees stay the same for the duration of the agreement or will they be revised during the term of the agreement?
- What is the process for updating rates during the term of the service agreement?
- How do rates compare with similar municipal users?

CAPITAL UPGRADE COSTS

- Are there additional capital or connection costs required at the time of connection (separate from the rates)?
 - ◆ Capital upgrade costs
 - ◆ Other
- How are these costs calculated?
- Is this a one time cost or a recurring cost? Can these rates be adjusted?

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

- Most municipalities will charge a flat rate for sanitary sewer service; some may charge a metered rate.
- Water rate structures tend to vary more than sewer rates – some municipalities charge flat rates, some charge metered rates, while others may charge a flat rate and a metered rate. It is important to be clear up-front what the rate structure is and what the charges are covering.
- Many municipalities will request that the First Nation pay for the costs of providing sufficient capacity in the municipal water or sewer system. In some cases, this may be in the form of a specifically calculated Development Cost Charge (DCC).
- Specific rates are often included in a schedule to the contract or the agreement may refer to the municipal bylaw rates.
- Up-front capital costs can be significant. It is important to be clear up front what those costs are, what they cover, and when they apply.



example contract terms

FLAT RATE (PER BUILDING / UNIT)

- ① "The First Nation shall pay an annual flat rate per building, as per the rate schedule attached to this service agreement."
- ② "The First Nation shall pay an annual flat rate per building of \$____, in addition to a consumption charge of \$____ per m³ as measured at the Reserve boundary."
- ③ "The First Nation shall pay the Municipality, all rates rents or charges prescribed in the Municipality's Fee For Service Bylaw in effect at any given time for water services charged at the same rate as other similarly situated users within the Municipality."

CAPITAL/DEVELOPMENT COSTS

- ① "The First Nation will pay to the City a Capital Development Fee for each parcel of land newly created or presently existing payable on the earlier of the creation of a new parcel of land by Subdivision or otherwise or the connection of a parcel of land, whether new or existing, to the Collection System."
- ② "In addition to the payment set out in paragraphs [X] with respect to water and sewer services to existing development on IR [X] as of January 1, 2016, the First Nation shall pay the sum of [X] as a capital cost assessment for the period prior to December 31, 2015. The First Nation will pay this Capital Cost Assessment in three annual installments of [X]."

PAYMENT / INVOICING

- ① "The First Nation shall pay such monies within 30 days of receipt of the billing from the Municipality. The First Nation shall be deemed to receive the invoice two days after it is mailed from the Municipality."

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)
- 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?
 - ◆ 1 year
 - ◆ 5 years
 - ◆ Other
 - ◆ How is notice given?
 - ◆ [see Section 8, Notification]



key considerations

- Suspension provides an opportunity for the party in breach of contract 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. Water and sewer agreements typically provide for long periods of advanced notice, because making alternate arrangements for service provision can be difficult.
- Termination clauses should identify if capital contributions or rates paid in advance will be reimbursed on a pro-rated basis.



example contract terms

SUSPENSION

① "Notwithstanding anything in this Agreement, the Municipality may, at its discretion, delay or interrupt the provision of the Service, without terminating this Agreement and without prejudice to any other rights and remedies it may have if:

- i. The First Nation fails to pay the Municipality any of the costs, fees, and other charges associated with the Works or the provision of the Service, as set out in this Agreement.
- ii. The First Nation fails to comply with any of its obligations under this Agreement; and such non-compliance for thirty days after the First Nation receives notice of its non-compliance; or
- iii. The Municipality determines that the interruption is necessary for public health and safety reasons or in order to respond to emergency situations occurring within the Municipality or the general vicinity of the Municipality."

TERMINATION

① "This agreement shall not be subject to termination by either Party unilaterally, whether in response to a breach by the other Party of any fundamental or other term of this agreement, or for any other reason, without the aggrieved Party first undertaking recourse by means of dispute resolution."

② "The First Nation may terminate this agreement, or any part thereof, if the First Nation is able to deliver the services previously delivered by the Municipality, on five (5) years written notice to the Municipality sent by registered mail."

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?
 - ◆ Changes in service area [see Section 3, Service Area]
 - ◆ Invoicing [see Section 5, Roles & Responsibilities]
 - ◆ System issues or service interruptions (e.g. malfunctioning hydrants)
 - ◆ Renewal [see Section 2, Renewal Terms]
 - ◆ Violations
 - ◆ Access and/or inspections
 - ◆ Suspension or termination of services [see Section 7, Suspension and Termination]
 - ◆ Anticipated growth and development
 - ◆ 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

- It is important that all agreements have clear notification provisions.
- Please refer to other relevant sections (Section 5, Roles and Responsibility; Section 7, Suspension and Termination; Section 2, Renewal Terms, etc.).



example contract terms

① “The City Engineer must notify the First Nation in writing of work to be performed on the Lands at least two working days before exercising the access rights in this paragraph.”

② "The City will undertake to provide the First Nation with advance notice of any amendments to the City bylaws which would affect this service agreement."

③ “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:

- That party has been served personally, on the date of service; or
- 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 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

- 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?
- Does your community anticipate future growth and development? What type and how much growth or development is anticipated?
- Can the service provider accommodate additional growth and development? How much additional service can be accommodated - are there limits?
- Will existing terms (i.e. rates, requirements) remain the same for new units, buildings, or areas or will they be different?

key decisions

- 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 or limit additional service?
 - ◆ Capacity limits
 - ◆ Other
- What are the costs of new growth?
 - ◆ Capital upgrade costs (off reserve)
 - ◆ Expansion of infrastructure (on reserve)
- Are there other requirements?



key considerations

- Accommodating minor growth and development of existing uses within an existing service area is likely to be accommodated.
- Accommodating major growth within the service area, an increase in intensity (e.g. unit density), a significant expansion of the service area, or new types of uses may not be guaranteed and may be subject to approval by the service provider.
- To ensure that future growth and development can be accommodated, it is important to notify and work with the service provider well in advance. Some agreements contain clauses encouraging collaboration between the parties.
- When the service area is changed or there is new development, the maps or lists of addresses in your agreement will need to be updated.
- New growth and development may incur capital cost charges [see Section 6, Rates and Payment] both on and off reserve.



example contract terms

NEW CONNECTIONS

- ① "No new connection will be made to the water and sewage services until the First Nation has first:
 - i. applied to the Municipality
 - ii. made payments to the Municipality as required in Section [X]; and
 - iii. had the proposed system to be connected, inspected and approved by the Municipality."

EXTENSIONS AND UPGRADES

- ① "The First Nation shall advise the Municipality of any planned extension or upgrades to their water system, so that the Municipality can assess potential impacts to the water system."
- ② "Prior to implementation of an extension or upgrade, detailed plans shall be submitted to the Municipality for review and approval. Alternatively, the First Nation may submit an assessment from an engineer that identifies the impact on the water demand, relative to the Levels of Service in Section [x]. The Municipality shall not unreasonably withhold approval."
- ③ "If the proposed works create a supply or capacity problem with the Municipality system, the First Nation shall be responsible for their portion on the upgrade of the Municipality system as outlined in Section [X] of the Agreement."

example contract terms

DEVELOPMENT AND INFRASTRUCTURE PLANNING

① "The First Nation will make the Municipality aware of all new subdivision or construction development being proposed for the Serviced Lands and prior to approving a proposal will consider any suggestions made by the Municipality to integrate the proposal into the Service as effectively as possible."

② "The Municipality and the First Nation will consult with each other in respect to joint infrastructure planning. Without limitation, each Party will, at minimum:

- i. Inform the other party of any planned or proposed development which may affect that Party's lands, infrastructure, or planning process;
- ii. Provide the other Party with opportunities to participate meaningfully in planning process relating to land use and infrastructure, including with respect to the Land Use Concept Plans and Municipality's Official Community Plan;
- iii. At least once per year, share its plans, budgets, documents and studies relating to land use and infrastructure planning with the other Party;
- iv. Deliver prior written notice of any infrastructure-related planning being carried out.
- v. Consider and respond to concerns, recommendations or other comments provided by the other Party;
- vi. Wherever possible, reach consensus with the other Party in respect of plans, priorities, budgets, funding sources, timelines and other matters relating to infrastructure. "

ADDITIONAL REQUIREMENTS

① "The First Nation will require all new construction and development on the Serviced Lands to connect to the Collection System."

10.0 | DISPUTE RESOLUTION

what it is

Dispute resolution establishes a process and procedure for dealing with 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

- What type dispute resolution process is to be used?
- What are the procedures / 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.



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 or group required? (e.g. a Utility Committee or Working Group)
 - ◆ Yes
 - ◆ No
- If yes, what is the mandate of the group?
 - ◆ Make decisions
 - ◆ Discuss issues and make recommendations to decision makers



key considerations

- Commitment to communicate 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"

