

# Pathways to Service Delivery

## Primer: Understanding each other

A primer to help you navigate some of the challenges in negotiating service agreements, through considering your partner's context and perspective.



# The background

At the most basic level, service agreements are contracts that are negotiated between two parties. But in the case of service agreements between two governments that represent different communities with unique cultures, identities, and visions for the future, these negotiations can be layered and complex.

## Why is having mutual understanding so important to negotiating a contract?

In 2013 a study was conducted to identify the most common challenges that come up during the negotiation and administration of service agreements between First Nation governments and local governments.

This study found that the presence of a good and respectful relationship was the most common factor for successful service agreement negotiation, establishment of fair rates, and ongoing administration of service agreements. Communities with service agreements that were perceived as fair for both sides consistently had a good relationship and mutual respect. And those communities that had strained or damaged relationships were often unable to move forward on their negotiations, had skewed rates that highly favored one party, or saw that service agreements weren't administered as originally agreed.

*Pathways to Service Delivery: A First Nation's guide to developing and re-negotiating municipal service agreements* was developed to document good practice and case studies that emerged from the 2013 study. This primer expands on the importance of building mutual understanding by identifying the most common challenges faced in negotiating service agreements that are related to a lack of understanding of specific differences between local governments and First Nation governments.

Sometimes these misunderstandings are minor and can be worked through quickly and easily if there is already a foundation of trust and openness between the two parties. But without that foundation, these misunderstandings can often lead to an erosion of trust, longstanding communication difficulties, and negotiation problems.

By knowing about these common challenges, and the types of misunderstandings that cause them, you'll be better prepared to navigate or even potentially avoid these issues altogether.

# When do misunderstandings happen?

Misunderstandings can occur at different stages throughout the negotiation or administration of a service agreement. Here are five stages during negotiation or administration where misunderstandings most commonly occur.

1

Defining services to be delivered

2

Developing rate structures for services

3

Building or upgrading infrastructure for joint service delivery

4

Servicing new development

5

Getting to a decision

# 1 Defining services to be delivered

A basic part of developing a service agreement is agreeing upon which services are going to be delivered and to what level. This sounds like it should be a straightforward exercise (and in many cases, it is!) but in some cases it is not.

## **Why can defining services be a challenge?**

The services that one party wants to sell are not the same services that the other party wants to buy.

The party providing the services becomes worried about liabilities of guaranteeing a certain level of service.

Service levels may not be currently defined by the party providing the service, so it can be difficult to define the service levels that will be provided to others through a service agreement. In many cases, agreements state that services are to be provided to “the same level”, but it’s not clear to those buying the services what this means.

## What should be considered, to alleviate or avoid a challenge in defining services levels?

### First Nation governments should consider:

Local governments may not have levels of service defined for their residents and work may need to be done to define service levels for a service agreement. You will likely need to work together to determine what “the same level” of service means so that you know what you’re buying.

Different services provided by a local government typically have different revenue sources (e.g. user fees, tax-supported, rates). Many local governments adopt a general principle that those who benefit from the service should contribute to covering the cost of providing the service. This can lead to a local government wishing to sell a ‘basket of services’ if there is a perception that these services are being used by people from your community. Having an open conversation about what each party views as fair and why is the first step in navigating this challenge.

### Local governments should consider:

First Nation governments provide many services to their members and residents, and often to people off-reserve. They are responsible for providing local services, as well as many services that are provided by the provincial and federal government for non-Aboriginal communities. Even if their members are using services provided by local governments, such as parks, recreation, roads, or libraries, they may also be providing similar services that benefit others from outside their community.

Having a service agreement that states that the “same level of service” will be provided as is off-reserve can be problematic because it provides no assurance of what service can be expected and what is being paid for. It may not be immediately evident what the level provided off-reserve actually is, so defining it in more specific terms can be very helpful.

Local government bylaws are not applicable on-reserve. If there are bylaws related to the services covered by the service agreement, the First Nation government may wish to pass their own laws or even pass ‘shadow laws’ that mirror those adopted by the local government.

# Developing rate structures for services

Once you have agreed what services will be provided, you need to determine what it will cost and how it will be paid for.

## Why can developing rate structures for services be a challenge?

Some communities have not conducted a full cost of service analysis to understand the cost of providing a single service or select grouping of services.

Accounting systems used to track and manage costs of providing services internal to a community may not be set up to track costs of providing specific services to a neighbouring community.

Common rate structures (e.g. mill rates) may be desirable for local governments, for consistency with in-community rates and accounting systems, but they may not work for on-reserve communities with different land ownership models or lower assessed value of land.

From time to time, the rate structure is determined separately from the actual cost of providing the service. This can make it difficult for parties to know whether the rates and agreement terms are fair or not.

## What should be considered, to alleviate or avoid a challenge in developing rate structures?

### First Nation governments should consider:

There is an opportunity to understand what is included in the cost of providing the service during the development of a service agreement.

Many services that have user fees (e.g. libraries, recreation centers, etc.) are typically also supported by general tax revenue because user fees don't cover the full cost of providing the service.

Full cost accounting rates, especially for utilities like water and sewer, may include a contribution to a reserve account – a small annual allowance saved to pay for the cost of future infrastructure replacement. It is important to know if this is included in your rate or not, and if so, how these reserve accounts will be spent to replace infrastructure.

### Local governments should consider:

Systems of land ownership and allocation on reserve are variable throughout the province, but they are not the same as systems in local government boundaries. This makes the application of mill rates to assessed value of land very challenging. Although BC Assessment can provide assessed value of land on-reserve, the assessed value is typically lower than adjacent land off-reserve.

Being clear and transparent about the cost of providing a service to your neighbouring community can help significantly in building trust and ensuring that the resultant service agreement is fair to both parties.

Indigenous and Northern Affairs Canada (INAC) provides First Nations with a subsidy specific services within a service agreement. Your First Nation neighbour may request specific information along with invoices, or a breakdown of services on invoices, to better enable the process of applying for funding from INAC.

# 3

## Building or upgrading infrastructure for joint service delivery

There are cases where new infrastructure or upgrades to existing infrastructure are required to meet service demands. These upgrades may be required before new service agreements can be implemented, or may be required in existing service agreements if demand increases due to growth. These upgrades typically pertain to agreements for water and sewer services.

### Why can building or upgrading infrastructure be a challenge?

It may be difficult to attribute demand to a specific population, making it challenging to agree on how to share costs.

Local governments and First Nation governments have different avenues for accessing the capital needed to finance the up-front costs of the project. Each of these avenues comes with a different timeline attached, which can further complicate projects.

Local governments and First Nation governments have different sources of funding to pay for infrastructure over time.

Local governments typically have their own design standards, and First Nations governments are required to comply with INAC design standards if receiving funding from INAC. These standards may differ.

## What should be considered, to alleviate or avoid a challenge in upgrading infrastructure?

### First Nation governments should consider:

Local governments have access to capital through the Municipal Finance Authority at favorable terms.

The Province of BC's Community Charter Act enables Cabinet to limit a local government's annual liability servicing limit to 25% of their controllable and sustainable revenues. Local governments may have their own debt policies that provide additional restrictions on use of debt.

Introducing a new demand to an infrastructure system (such as connecting a water service to an adjacent community) can have significant impacts on how a system operates and may introduce the need for upgrades that are far from where the demand is.

Aging infrastructure may require upgrades in the near future, even without increases in demand. The timing of replacement of existing infrastructure should be considered when determining how costs for upgrades are shared between communities.

### Local governments should consider:

Infrastructure funding available to First Nations through the federal government is limited, prioritized, and competitive (similar to funding available for local government projects). Federal funding to support joint projects may not be available, or may be available through different programs.

Federal funding support available to support infrastructure development for First Nations governments requires specific processes for project administration and reporting.

First Nations governments may not have access to capital at terms as favorable as the Municipal Finance Authority. Many First Nations will access capital for projects through major banks.

The First Nations Finance Authority provides access to capital at favorable terms for First Nations that are members and approved for borrowing.

# Servicing new development

Land development provides a significant opportunity for economic development for many First Nation communities. Economic development is vital to providing jobs and revenues needed for community development and the well-being of community members. New land developments will require services, and service agreements might be seen as the best way to provide these services – either through an amendment to existing service agreements, or through negotiation of a new agreement.

## Why can agreeing on how to service a new development be a challenge?

Some neighbouring communities may not be proactively transparent with each other about land development plans. Lack of clarity about plans for land development can lead to fear and assumptions.

There can be disagreement on whether to share tax revenue from on-reserve development for non-members, or how tax revenue should be shared.

There can be a lack of clarity, or disagreement about offsite impacts of development and how these impacts should be managed or mitigated.

## What should be considered, to alleviate or avoid a challenge in servicing new development?

### First Nation governments should consider:

Local governments may be concerned about the impacts of development on adjacent services or infrastructure. Proactive communication of relevant aspects of development plans (layout, timing, projected service demands) and working together to estimate external impacts is essential to building trust.

Local governments often have master plans for services and infrastructure. They may be concerned that changes to demand on infrastructure will require changing their master plans to reflect new circumstances.

Some neighbouring First Nations and local governments have agreed that sharing tax revenue collected by the First Nation government from leasehold (i.e. non-band member) developments is a fair way of paying for increased demand on certain tax-supported services. The exact split varies widely and depends on the services covered and the terms negotiated between the two governments.

### Local governments should consider:

Each nation will have their own priorities for economic development and their own priorities, values, and approaches to developing land.

While information about required level of service and expected timing of development can (and should) be shared for service agreement purposes, other types of information related to the business may be sensitive and the First Nation government may need to take care in sharing this information.

Land development projects may likely have significant benefits for the adjacent community, as well as impacts. Impacts and benefits should be considered together when negotiating service agreement terms.

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## Getting to a decision

The development and negotiation of a service agreement ultimately reflects a series of decisions made by leadership of the two negotiating governments. These decisions often start with elected leadership developing and agreeing to a set of principles to guide how the two communities will work together, before moving on to more technical and logistical decisions made by staff in the appropriate positions.

### Why can defining services be a challenge?

Local governments and First Nation governments operate using different structures and hierarchies, so it is not always obvious who to talk when questions need answering or decisions need to be made.

Staff turnover and changes to elected leadership in both First Nation governments and local governments can impose additional challenges to the decision making process.

## What should be considered, to alleviate or avoid a challenge in getting to a decision?

### First Nation governments should consider:

The governance and structure of local governments is relatively consistent as all local governments in BC (with the exception of Vancouver) are governed by the Local Government Act.

Elections take place every four years, on the same date throughout the province. Newly elected officials may need to be briefed of the negotiations and any existing government-to-government protocol or agreements before they are ready to fully participate in making decisions.

Some larger local governments can have internal staff hierarchies that need to be navigated. Different levels within the hierarchy will be able to provide different types of information relevant to the service agreement and will have differences in decision making authority.

It can be valuable to put in place a memorandum of understanding, or government-to-government protocol prior to getting into negotiation about specific contract terms. This agreement should include guidance for how the two organizations will communicate regularly.

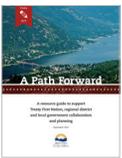
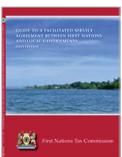
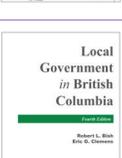
### Local governments should consider:

There is considerable diversity of governance systems, decision making authorities, and organizational structures among First Nations in BC. This means that what is learned about hierarchy within one community does not necessarily apply to other communities.

Some First Nations actively use a hereditary leadership system, and may have one or more hereditary chiefs who are involved in decision making processes. This is in addition to the system of having an elected chief and council.

Election dates and frequencies are determined by the First Nation's own electoral code, or by the Indian Act if the First Nation does not have an electoral code. This means that election frequencies and dates vary from community to community. Newly elected Chiefs or council members may need to be briefed of the negotiations and any existing government-to-government protocol or agreements before they are ready to fully participate in making decisions.

Many First Nation governments in BC have a relatively small group of staff that are responsible for managing a broad range of services (many of which are beyond the scope of what local governments are responsible for). Staff members often have multiple portfolios to juggle. This can impact the pace at which decisions are made.

Resource	Organization	Format	
Pathways to Service Delivery	Naut'sa mawt Tribal Council, Urban Systems	Guidebook	
A Path Forward	Province of British Columbia	Guidebook	
Guide to a Facilitated Service Agreement Between First Nations and Local Governments	First Nation Tax Commission	Guidebook	
First Nation-Municipal Community Infrastructure Partnership Program Service Agreement Toolkit	Federation of Canadian Municipalities	Guidebook	
Revision Quest	Canadian Broadcasting Corporation (CBC)	Podcast	
Governance Toolkit: A Guide to Nation Building	British Columbia Assembly of First Nations	Toolkit	
Local Government in British Columbia	Student Vote	Video	
Local Government in British Columbia: A Community Effort	Union of British Columbia Municipalities	Handbook	
Introduction to Regional Districts: Communities in Partnership	Union of British Columbia Municipalities	Handbook	
Local Government in British Columbia	Bish and Clemens for Union of British Columbia Municipalities	Textbook	

Description	Link
A First Nations' guide to developing and re-negotiating municipal service agreements	<a href="http://www.urbansystems.ca/resource/pathways-to-service-delivery/">http://www.urbansystems.ca/resource/pathways-to-service-delivery/</a>
A guide to help Treaty First Nation, regional districts, and local governments improve regional planning, collaboration and service delivery as treaties are implemented across BC	<a href="http://www2.gov.bc.ca/assets/gov/environment/natural-resource-stewardship/consulting-with-first-nations/agreements/other-docs/Treaty_Guidance-a_path_forward.pdf">http://www2.gov.bc.ca/assets/gov/environment/natural-resource-stewardship/consulting-with-first-nations/agreements/other-docs/Treaty_Guidance-a_path_forward.pdf</a>
A guide to the history of service agreements, and philosophy, best practices, and steps to negotiate a successful long term service agreement	<a href="http://sp.fng.ca/fntc/fntcweb/SA_guide_2014_web_small.pdf">http://sp.fng.ca/fntc/fntcweb/SA_guide_2014_web_small.pdf</a>
A comprehensive toolkit that provides information on municipal and First Nation governance structures, including legislation, elected officials, administration, services and funding.	<a href="http://www.fcm.ca/home/programs/community-infrastructure-partnership-program/program-resources/toolkit.htm">http://www.fcm.ca/home/programs/community-infrastructure-partnership-program/program-resources/toolkit.htm</a>
Podcast that explores contemporary First Nations issues in Canada.	<a href="http://www.cbc.ca/revisionquest/">http://www.cbc.ca/revisionquest/</a>
Toolkit that provides information on First Nation legislation (Indian Act and sectoral governance), services, financing, and the treaty process	<a href="http://bcafn.ca/">http://bcafn.ca/</a>
Short and accessible video to introduce the roles and responsibilities of local governments in BC	<a href="https://youtu.be/13kIEyBEUfk">https://youtu.be/13kIEyBEUfk</a>
Information on municipal and regional district governance, including role of elected officials and community participation, services, administration and funding	<a href="http://www.ubcm.ca/assets/Services/Documents/UBCM%20Local%20Gov%202012.pdf">http://www.ubcm.ca/assets/Services/Documents/UBCM%20Local%20Gov%202012.pdf</a>
Introduction to the roles, finance, structures, and procedures of regional districts	<a href="http://www.rdmw.bc.ca/media/Regional%20District%20Toolkit%20-%20Booklet-Intro%20to%20RDs.pdf">http://www.rdmw.bc.ca/media/Regional%20District%20Toolkit%20-%20Booklet-Intro%20to%20RDs.pdf</a>
In-depth review of municipal and regional district structure, service delivery and finance, and introduction to First Nation governments, including the range of governance structures	<a href="http://www.ubcm.ca/EN/main/services/publications/local_government_book.html">http://www.ubcm.ca/EN/main/services/publications/local_government_book.html</a>

## Contacts

**BC Assembly of First Nations**  
[www.bcafn.ca](http://www.bcafn.ca)

**BC Treaty Commission**  
[www.bctreaty.net](http://www.bctreaty.net)

**First Nations in BC Knowledge Network**  
[www.fnbc.info](http://www.fnbc.info)

**Ministry of Community, Sport & Cultural Development**  
[www.cscd.gov.bc.ca/lgd](http://www.cscd.gov.bc.ca/lgd)

**Union of British Columbia Municipalities (UBCM)**  
[www.ubcm.ca](http://www.ubcm.ca)

**Local Government Management Association (LGMA)**  
[www.lgma.ca](http://www.lgma.ca)

**CivicInfo**  
[www.civicinfo.bc.ca](http://www.civicinfo.bc.ca)

# Conclusion

Although a service agreement is simply a legal contract between two parties, it is a government-to-government agreement between neighbouring communities and therefore represents much greater opportunity if approached as more than a typical business contract.

Negotiating a service agreement presents an opportunity to work together and develop a deeper sense of understanding between the two communities. This mutual understanding of similarities and differences, strengths and challenges, can open the door to working together in the future for the benefit of everyone.

Some communities may currently experience a strained relationship due to past events. If the relationship is bad between neighbours, it will take an influential champion who has the will and the abilities to bring people together to re-build it. This can be a challenge, but communities throughout the province have proven that it can be done. Sometimes, re-building relationships can take time and may start with small steps. Communities can negotiate service agreements that are fair to both parties, as long as each party is willing to negotiate.

Resources such as this primer and the included references can be helpful in building some understanding about each other – but they are not intended to replace the basic act of talking to each other. Putting yourself in the position of a humble learner and asking questions from a place of genuine intent will go a long way towards building human connections, deeper understanding, and ultimately the trust that is required to work together.

## Acknowledgements

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