

# FNLMRC

## Training, Mentorship and Professional Development

### Solid Waste Management 102: Municipal Type Service Agreements (MTSA's) between Framework Agreement Operational Communities and Service Providers

TMPD Course Workbook  
July 2019







## A Welcome Message

Welcome to the printed version of our online course focusing on Solid Waste Management. This is the second of three courses on the subject, with more to come. The course is developed specifically to mirror the online version, for communities having limited Internet access, or for learners who prefer print over screen.

The course is brief, introducing key terms and concepts related to the subject. It also has “knowledge checks” so that you can check yourself along the way.

We hope that you will find it informative for your work.

In the meantime, should you require any assistance, please let us know.

*The Resource Centre’s “Training, Mentorship and Professional Development” team.*





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## Course Objectives

Upon completion of this course, you may be more familiar with:



Your community's authorities as related to Solid Waste Management under the Framework Agreement.



Identifying how to develop effective partnerships and service agreements as an operational First Nation under the Framework Agreement related to Solid Waste Management under the Framework Agreement.

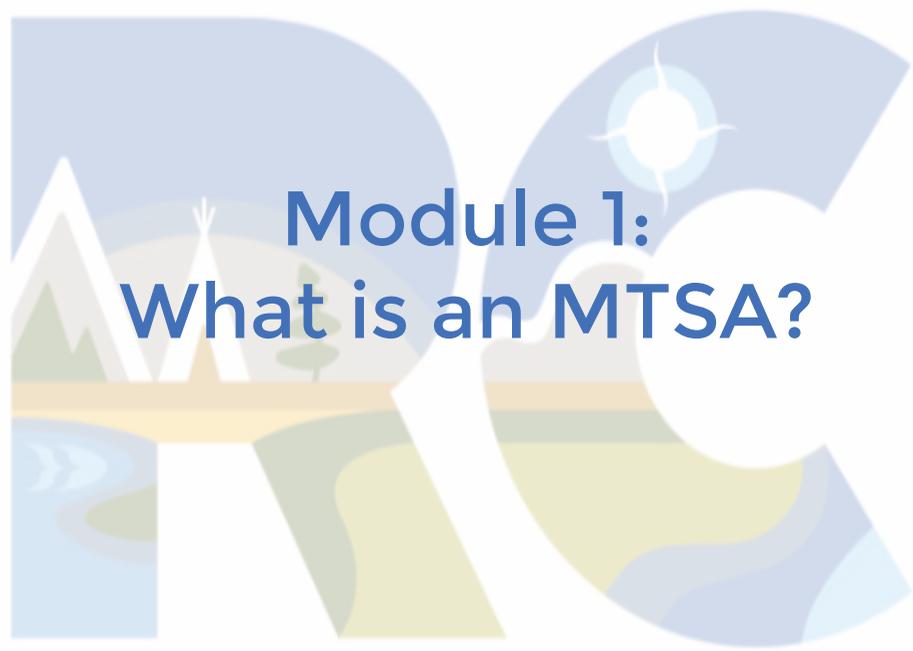


Identifying funding that may available to First Nations in managing Solid Waste.





# Module 1: What is an MTSA?

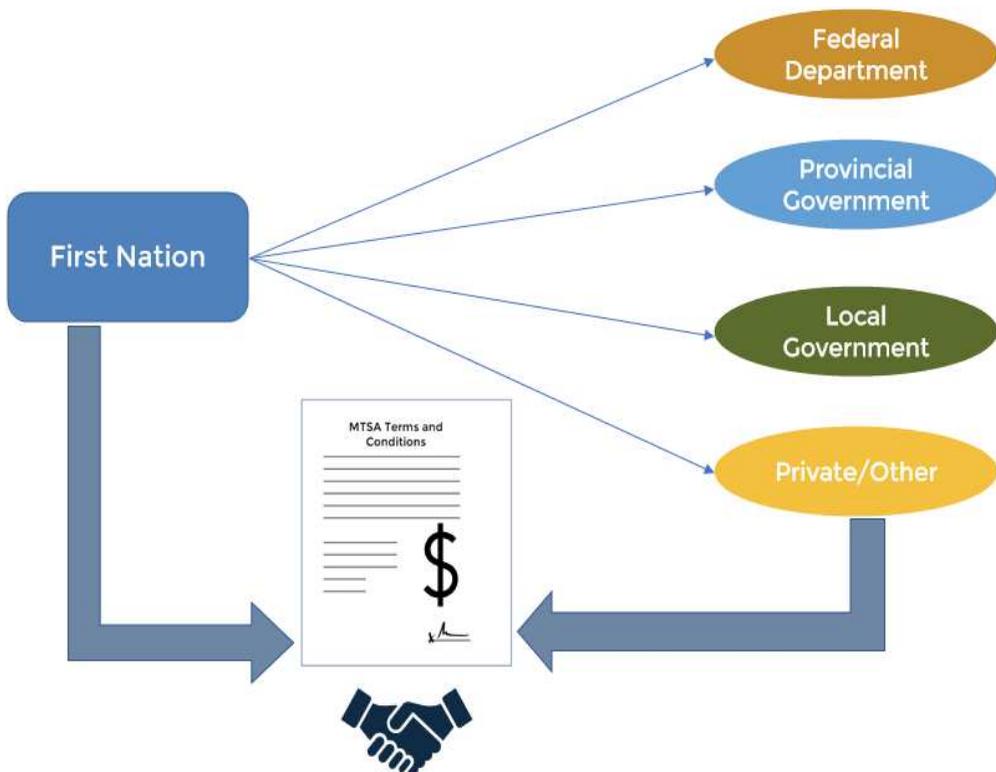


## What is an MTSA?

A Municipal Type Service Agreement (MTSA) is defined as an agreement between the First Nation and a federal department, provincial government, city, town government, private contractor, Individual, or organization.

Under most MTSA's, the First Nation agrees to pay a fee in exchange for receiving third party services such as water, solid waste disposal and fire protection.

An MTSA for solid waste is a service contract between a First Nation and a third party under which all or a portion of a First Nation's on-reserve solid waste is managed by a third party for an agreed upon duration and fee.



# Process of Service Agreement Development

## Roadmap to Service Agreements



Diagram based on: Community Infrastructure Partnership Program (CIPP), January 2011.

## Needs Assessment & Feasibility Study

- Review existing assets & services - Do they meet existing and future needs?
- Strategize
- Compare costs and options
- Do I need an MTSA?
- Include Indigenous Services Canada (ISC) early on for funding support
- Identify infrastructure & equipment upgrades prior to MTSA
- Ensure the conditions in your land code are met

## Municipal & Land Use Planning

### Long-range Planning

- Municipal Official Community Plans (OCP)
- First Nation Comprehensive Community Plans
- Community Land Use Plan



### Early Engagement

- Local government service providers need to anticipate providing services
- Will likely need to increase capacity to serve communities outside their boundaries



### Early Engagement

- Think about what services are needed
- Engage with service providers during Land Use Planning



## MTSA: Know Your Neighbour

**Before creating an MTSA, it might be useful to speak to other First Nations who have already created one.**

- 1) Contact neighboring communities:
  - Managers of solid waste
  - Learn what services are being provided
  - Determine the types of contracts & which companies providing service
  - Explore potential partnerships
  - Understand the level of service received by off-reserve house holds
  - Know the rate paid by non-reserve households
- 2) Review municipal bylaws
- 3) Identify ways that a First Nation can help a municipality e.g. capital cost contributions
- 4) Assess services & contractors, blue box materials, total collection & processing costs, disposal fees and willingness to pursue MTSA

## Negotiating a Service Agreement

Service Agreements can be made with other First Nations, government, municipalities and even private contractors. Below are some benefits to negotiating a service agreement.

### Negotiating a Servicing Agreement



Build Trust & Understanding



Strengthens relationships



Mutually beneficial



Documented in a protocol or MOU



Political



Technical

## Preparing to Negotiate: Key Questions

- On what services am I willing to cooperate?
- What are my main concerns?
- What will my partner's main concerns be?
- How am I prepared to address my partners concerns?
- What are my communities' main restrictions?
- What am I looking for in this partnership in terms of communication?
- Is there a timeline in which I would like to try to achieve our objectives?
- What does success look like to me?
- Do we have a Land Use Plan that we can share?



## Memorandum of Understanding (MOU)

A MOU is a formal document describing the broad outlines of an agreement that two or more parties have reached through negotiations. It is not a legally binding document but signals the intention of all parties to move forward with a contract.

### **An MOU may be good if you are:**

- Starting a new MTSA or a major update to an existing one
- Negotiating a capital contribution from ISC
- Planning a major upgrade to infrastructure
- Have a history of poor communication or misunderstanding
- Had major staff turnover & working relationship between representatives is new
- Not using a private contractor

### **An MOU sets out:**

- Point person, other parties involved, communication
- General principles of working together
- When & how often to communicate or meet
- Information sharing

### **A MOU helps to plan for developing an MTSA:**

- How to manage pre-work, provide info, share work & studies
- Sharing information on political level
- Time-line for negotiating MTSA
- Resourcing

## Request for Proposals (RFP) Process

1. RFP's are often used if hiring a private contractor
2. Develop RFP - issue or tender?
3. Develop RFP - decisions
4. Issue RFP
5. Evaluate bids - qualitative evaluation, price evaluation
6. Proceed to enter into negotiations with selected contractor

### Issuing a Request for Proposals

#### 1. Pre-Planning

##### Determine:

- Purpose of Plan and need for consultant
- Scope of work
- Budget
- Specific deliverables
- Criteria consultants must meet (e.g. certified planner, experience with First Nations Lands Governance)
- RFP Review criteria
- RFP Scoring criteria and review process

#### 2. RFP Drafting

##### Terms of Reference:

- Purpose of RFP
- Introduction, community & background info
- Study area
- Available resources
- Specific deliverables
- Work plan requirements
- Contract details
- Proposal format
- Evaluation process & criteria
- Submission details & deadline

#### 3. RFP Issued

- Distribution
- Q & A
- Receive submissions

#### 4. Review and Award Contract

- Strike review panel
- Score RFP's
- Select finalists
- Conduct interviews and reference checks
- Clarify any gaps in info
- Select consultant & award contract
- Negotiate final contract
- Notify other bidders
- Begin project !!

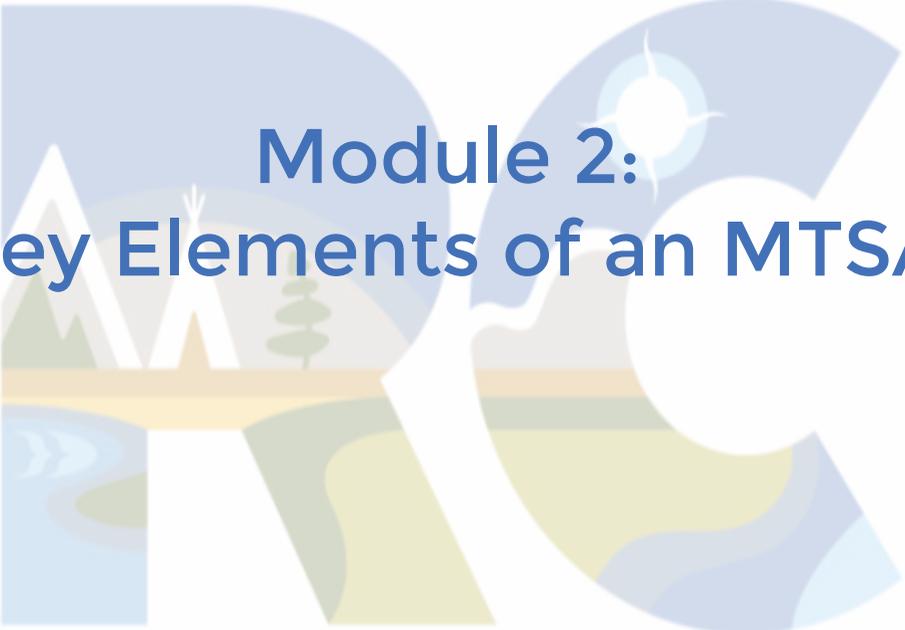
**For a Consultant Evaluation Matrix example see Attachment D.**



# Knowledge Check

Please answer the (4) questions below.

1. A Municipal Type Service Agreement is an agreement made only between a First Nation and a private contractor.
  - a) True
  - b) False
  
2. The process of creating a service agreement can take more than 2 years.
  - a) True
  - b) False
  
3. When preparing to negotiate a service agreement, is it important to identify your main concerns.
  - a) True
  - b) False
  
4. RFP's are only used if working with government agencies.
  - a) True
  - b) False



**Module 2:  
Key Elements of an MTSA**

# Key Elements of an MTSA

## 1. Terms of Service

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

How long do you want your agreement to be for?

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.).

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.).

## 2. Renewal Terms

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

### **Why it is 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 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.

### 3. Service Area

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 is 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:**

Your Land Use Plan will be a key consideration. 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.

## 4. Level of Service

Level of service refers to the quality of the services being provided and paid for.

### Why it is 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 factor.

### Key Decisions:

Who will be providing the service?

What services do you require?

What materials do you need to be collected and disposed of?

What materials are permitted and not permitted?

How will the materials be stored for collection?

How often do you require service?

Is the same frequency of service required for all units, buildings, locations within the service area?

Are there limits to the amount of service? What about excess?

Where will the garbage be disposed or the recycling be deposited?

Who will maintain the garbage and/or recycling bins?



## 5. Roles & Responsibilities

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

### **Why it is 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:

- Aligning with the requirements of your Land Code
- 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 and liability insurance



## 6. Rates & Payments

### Why it is important:

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

### Key Decisions:

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?

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?

When is invoicing to occur? Monthly, Quarterly, Annually?

When must payment be received?

How must payment be made? By cheque, electronically?



## 7. Suspension & Termination

Suspension and 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 is 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?

Under what conditions can services be suspended or 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 or provide services)?

What are the procedures for suspension or termination?

What type of advanced notice is required prior to termination of the agreement? 60 days, 120 days, other?

How is notice given?

## 8. Notification

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

### Why it is important:

It ensures clear communication between parties and a written record of key decisions, changes, issues, etc. Your Land Use Plan will help you and the service provider define the requirements.

### Key Decisions:

Under what conditions is notice required?

- Amendments to agreements or schedules
- Changes in service area
- Invoicing, renewal, violations
- Suspension or Termination of services

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.

## 9. Growth & Development

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

### Why it is 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.



## 10. Dispute Resolution

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

### Why it is important:

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



## 11. Communication

States how the parties of the MTSA will formally communicate with one another over the lifetime of the agreement.

Proactive planning to meet with your service partner.

### Regular communication helps you fulfill your MTSA by:

- Staying up to date on service delivery
- Discussing and resolve issues early, before they become problems
- Sharing information, especially if there are staff changes
- Building rapport and establish trust
- Avoiding confusion

### Key Elements

Identifies the primary contacts for each party.

How often meetings are to occur.

What topics need to be discussed regularly.

Whether a formal committee is required and if so, the mandate of the committee.

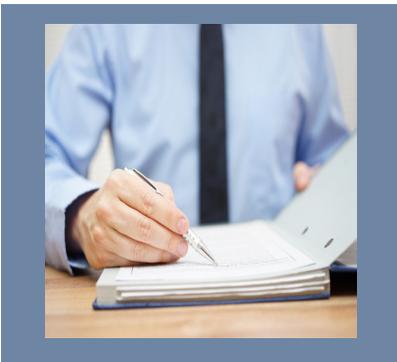
Contact information.

## Legal Review

1. Use plain language
2. MTSA's are legal documents and require legal review

### Conduct a legal review in order to:

- Ensure that your agreement does not conflict with the land code of your community
- Ensure consistency
- Understand roles and responsibilities
- Confirm the specifics of the service to be received



### You should get a legal review if you are:

- ✓ Starting a new MTSA
- ✓ Making major changes to an existing MTSA
- ✓ Planning large capital investments

### Once the community & partner agree on the components of the MTSA, a lawyer can draft and take care of the standard details:

- ✓ Schedules
- ✓ Assignments
- ✓ Acknowledgement of Rights
- ✓ Headings
- ✓ Liabilities and Insurance
- ✓ Governing Laws
- ✓ Indemnity

# Knowledge Check

Please answer the (4) questions below.

1. Which option is NOT a key element of an MTSA?

- a) Renewal Terms
- b) RFP Development
- c) Suspension & Termination
- d) Notification

2. Renewal terms make it clear whether the agreement can be renewed.

- a) True
- b) False

3. A dispute resolution makes the suspension or termination process clear and fair to both parties.

- a) True
- b) False

4. MTSA's do NOT require legal review.

- a) True
- b) False



# Module 3: Funding



# Indigenous Services Canada (ISC) Funding



While Indigenous Services Canada is not a party to the agreement, the department provides funding to assist First Nations to cover the fees.

The ISC funding is based on cost-sharing level between ISC & First Nations (up to 80%). The First Nation will need to cover the remaining 20%.

Only a portion of an MTSA that services First Nations band members residences is eligible for ISC funding. This can include band owned buildings that receive annual Operations and Maintenance (O&M) from ISC, as a undable asset.

A community's Solid Waste Management plan must indicate what portions of the community waste stream is eligible for support from ISC and what portion is not eligible.

ISC will support the costs for waste generated from the following:	ISC will not support waste generated from the following:
<ul style="list-style-type: none"> <li>• Residents</li> <li>• Community buildings (band offices, Recreational Centres, Cultural Centers)</li> <li>• Schools and Daycare centres</li> </ul>	<ul style="list-style-type: none"> <li>• Industrial source waste</li> <li>• Commercial source waste (gas stations, stores, warehouses, casinos)</li> <li>• Institutional source waste (health clinics, training facilities)</li> <li>• Private, non-First Nation source waste (such as: Health Canada offices, privately owned buildings)</li> <li>• Cottages or Leased lots</li> </ul>

## Responsibilities of the Parties

First Nation	Municipality/ Contractor	ISC
<ul style="list-style-type: none"> <li>• Community notifications</li> <li>• Liability insurance</li> <li>• Payment on-time &amp; in-full</li> <li>• Provide access to reserve and pick-up areas</li> <li>• Maintain transfer station</li> <li>• Maintain bins</li> <li>• Updating service areas</li> </ul>	<ul style="list-style-type: none"> <li>• Service provision on schedule and in-full</li> <li>• Provision of their equipment and staff</li> <li>• Invoicing</li> <li>• Notifications</li> <li>• Liability insurance</li> </ul>	<ul style="list-style-type: none"> <li>• Review service agreement documents</li> <li>• Respond to requests for new service agreements and renewals</li> <li>• Confirm funding to support service agreement</li> <li>• Enter into a funding agreement with First Nation</li> <li>• Conduct service agreement and request for renewals</li> <li>• Review reporting provided by First Nation</li> <li>• Update ICMS database and service agreements</li> </ul>

## ISC Funding Eligibility

Eligible Solid Waste Services	Ineligible Solid Waste Services
<ul style="list-style-type: none"> <li>• Solid Waste Collection from Transfer Station</li> <li>• Solid Waste Disposal (including hauling and transportation fees)</li> <li>• Solid Waste Landfill Tipping fees</li> <li>• Hazardous Waste Diversion</li> <li>• Recycling</li> <li>• Composting</li> </ul>	<ul style="list-style-type: none"> <li>• Services that are already included and funded under ISC O&amp;M</li> <li>• Industrial</li> </ul>

# ISC: First Nation Infrastructure Fund (FNIF)

## First Nation Infrastructure Fund (FNIF)

Improves & increase public infrastructure on-reserve, crown land, also off-reserve that are cost shared with non-FN partners (Municipalities).

### FNIF - What you need to know:

- Complimentary source funding to Capital Facilities and Maintenance Program (CFMP) - includes solid waste management
- No need to apply, projects identified through FNIFs annual process & priority ranking (may identify projects that are not documented in FNIF, screened for eligibility & assessed by same criteria.)
- A project submission is required



### Priority given to projects that:

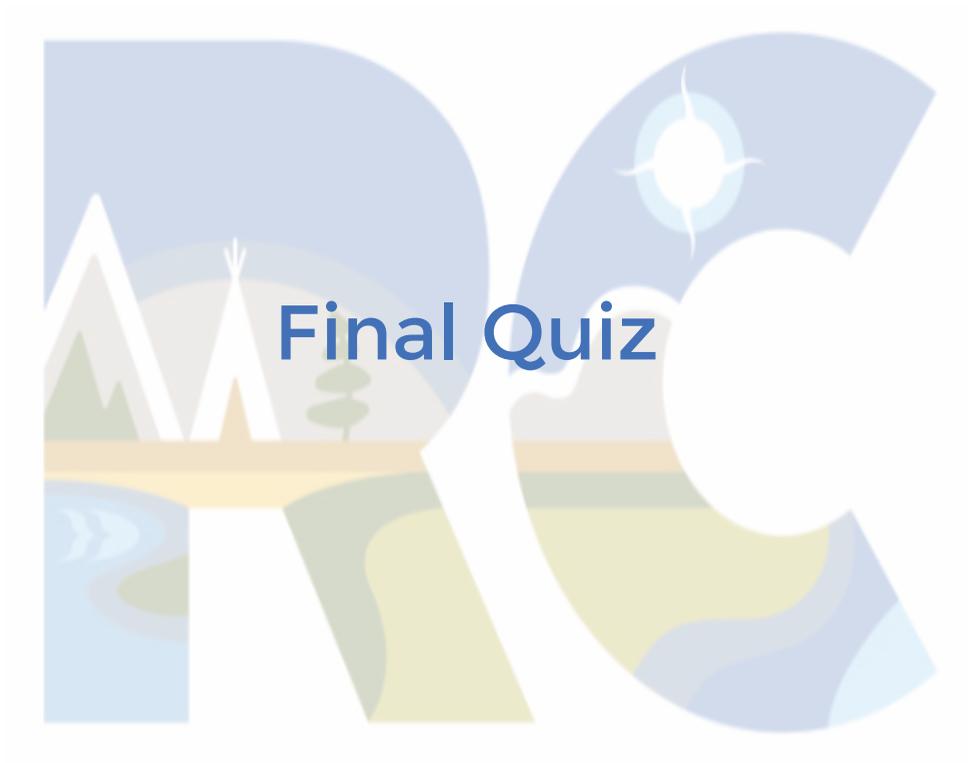
- Have a regional impact by providing a benefit for more than one First Nation and/or cross regional boundaries
- Are cost-shared (e.g. neighboring municipality or private sector)
- Align with regional priorities (Munic. Prov. Fed)
- Demonstrate the potential to partner with neighboring communities



# Knowledge Check

Please answer the (4) questions below.

1. The ISC funding is based on cost-sharing. First Nations will only need to cover 5%.
  - a) True
  - b) False
  
2. ISC will support waste generated from commercial source waste.
  - a) True
  - b) False
  
3. A First Nation is responsible for maintaining the transfer station.
  - a) True
  - b) False
  
4. An eligible solid waste service for ISC funding would include hazardous waste diversion.
  - a) True
  - b) False





Please answer the (4) questions below.

1. An MOU is a legally binding document that sets out a timeline for negotiating an MTSA.

- a) True
- b) False

2. An MTSA is an agreement between a First Nation and ... (select all that apply).

- a) Other First Nations
- b) Private Contractors
- c) Provincial Government
- d) Federal Government

4. Which of the choices below are key elements of an MTSA (select all that apply).

- a) Growth and Development
- b) RFP's
- c) Communication
- d) Level of Service
- e) Hazardous Waste Disposal

5. The ISC funding will NOT support waste generated by schools and daycare centres.

- a) True
- b) False



# Framework Agreement on First Nation Land Management

## EXECUTIVE SUMMARY

For Full Version of the Framework Agreement and other resources please visit our [website](#).

## INTRODUCTION

The Framework Agreement on First Nation Land Management (Framework Agreement) is an historic, government-to-government agreement signed on February 12, 1996 between the original First Nations who created and advocated for it, and the Minister of Indian Affairs and Northern Development. It is an initiative developed by these First Nations to opt out of the 44 lands related sections of the *Indian Act*. The Framework Agreement recognizes First Nations' inherent right to govern their lands.

Today, the Framework Agreement has expanded to include an ever-growing number of communities across Canada who are interested in replacing the lands restrictions of the Indian Act with the legal framework developed in a community land code. Only those First Nations who are signatory to the agreement are affected by its application.

Each signatory community to the Framework Agreement assumes the administration and full law-making authority of their reserve lands, environment and natural resources, when they ratify their land code. Canada ratified and implemented the Framework Agreement in the *First Nations Land Management Act*, which was assented to June 17, 1999.



# Answer Key

## Knowledge Check 1

1. False
2. True
3. True
4. False

## Knowledge Check 2

1. b) RFP Development
2. True
3. False
4. False

## Knowledge Check 3

1. False
2. False
3. True
4. True

## Final Quiz:

1. False
2. a) Other Nations, b) Private Contractors, c) Provincial Government, d) Federal Government
3. a) Growth and Development, c) Communication, d) Level of Service,
4. False

# Glossary of Terms and Acronyms

## Dispute Resolution

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

## Environmental Management Plan (EMP)

An EMP will identify environmental issues on reserve and outline the First Nation's proposed responses to those issues. It helps First Nations to meet their legal obligations and limit liabilities, and outlines the laws, policies, and procedures a First Nation wants to develop, setting out a detailed workplan and timeline for their development. EMPs are also good communication tools, providing direction to staff, community, other governments, businesses and institutions on the First Nation's environmental priorities and requirements.

## Framework Agreement (FA)

The Framework Agreement is a government to government agreement signed in 1996. It gives First Nations the option of withdrawing their lands from the *Indian Act* in order to exercise control over their lands and resources.

## ICMS: Integrated Capital Management System

## *Indian Act (IA)*

The *Indian Act* is a legislation enacted by the Federal Government. The current act has been in place since 1951.

## INAC: Indigenous and Northern Affairs Canada

## IRWDR: Indian Reserve Waste Disposal Regulations

## ISC: Indigenous Services Canada

## Land Use Planning (LUP)

Land Use Planning is the process of regulating the use of land in an effort to promote more desirable social and environmental outcomes, promoting the efficient use of resources, and fostering fair and transparent decision-making processes regarding the land and its uses. It may be a requirement of your Land Code.

## Leachate

Liquid that drains or leaches from a landfill.

## Memorandum of Understanding (MOU)

A formal document describing the broad outlines of an agreement that two or more parties have reached through negotiations. It is not a legally binding document but signals the intention of all parties to move forward with a contract.

## Municipal Type Service Agreement (MTSA)

Municipal Type Service Agreement is defined as an agreement between the First Nation and another federal department, provincial government, city, town government, private contractor, individual, other First Nations or organization.

## O&M: Operations and Maintenance

### Service Agreements

A contract between a First Nation and a third party under which all or a portion of a First Nation's on-reserve solid waste is managed by a third party for an agreed upon duration and fee.

### Service Area

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.

## Site Closure

An area (land fill) that is decommissioned in a manner that promotes re-vegetation, minimizes leachate and ensures that buried residual waste does not pose a physical hazard to people or animals that may use the site.

## Solid Waste

Solid Waste is any material, non-hazardous or hazardous that has no further use, and which is managed at recycling processing or disposal sites.

## Solid Waste Management

Solid Waste Management is defined as the discipline associated with control of generation, storage, collection, transport or transfer, processing and disposal of solid waste materials in a way that best addresses the range of public health, conservation, economics, aesthetic, engineering and other environmental considerations. Solid waste management includes planning, administrative, financial, engineering and legal functions.

## Suspension and Termination

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

## Terms of Agreement

The Terms of Agreement is the duration of the contract.

## Waste Audit

A Waste Audit will assist you in determining the types and amount of waste generated by the community.





**FIRST NATIONS  
LAND MANAGEMENT  
RESOURCE CENTRE**

July, 2019