Solid Waste Management
Municipal-Type Service Agreements (MTSA's)

Kamloops, July 10-11, 2019

Presentation Overview

- What is an MTSA
- Needs Assessment & Feasibility Study
- MTSA Development Process
- Key Elements of an MTSA
- Funding

What is a Municipal Type Service Agreement?

An agreement for services between:

First Nation

MTSA
Terms & Conditions

Federal Department

Provincial Government
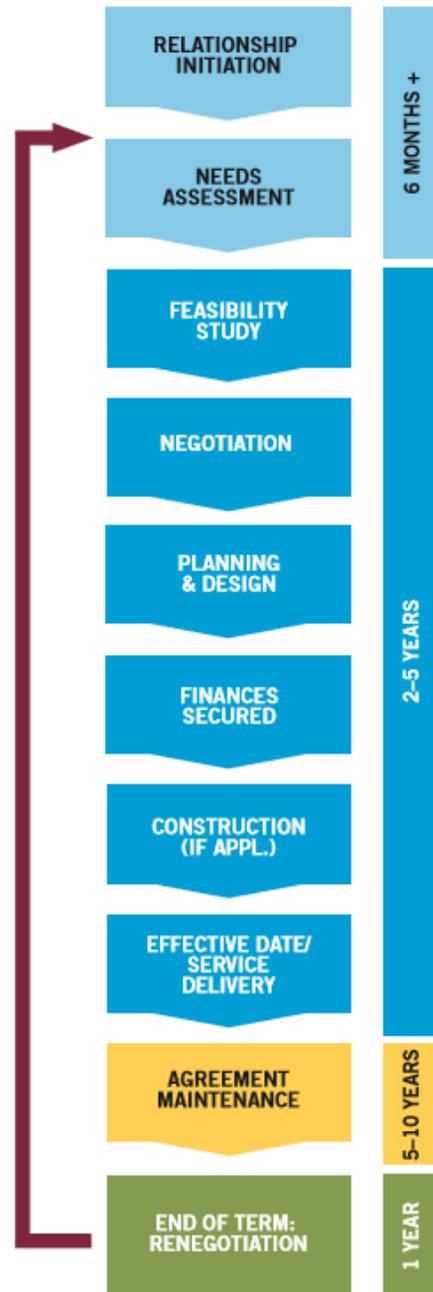
Local Government

Private/Other

Needs Assessment & Feasibility Study

- Review existing assets & services. Do they meet existing and future needs?

- Strategize

- Compare costs & options

- Is MTSA an option?

- Include ISC early on for funding and support

- Identify Infrastructure & equipment upgrades prior to MTSA

Process:

Table 1: Roadmap to service agreements

Stage	Timeline
RELATIONSHIP INITIATION	6 MONTHS +
NEEDS ASSESSMENT	
FEASIBILITY STUDY	2–5 YEARS
NEGOTIATION	
PLANNING & DESIGN	
FINANCES SECURED	
CONSTRUCTION (IF APPL.)	
EFFECTIVE DATE/ SERVICE DELIVERY	
AGREEMENT MAINTENANCE	5–10 YEARS
END OF TERM: RENEGOTIATION	1 YEAR

Source: Community Infrastructure Partnership Program (CIPP), January 2011.

https://data.fcm.ca/documents/tools/cipp/CIPP_Toolkit_Unit_1_EN.pdf Page 10

Municipal & Land Use Planning

Long-range Planning

Municipal Official Community Plans (OCP)

First Nation Comprehensive Community Plans

First Nation Land Use Plans

Early engagement

Local gov't Service providers need to anticipate providing services

Will likely need to increase capacity to serve communities outside their boundaries

Internal Land Use Planning

Think about what services are needed

Engage with service providers during LUP process

MTSA: Know Your Neighbor

- Contact neighboring communities –
  - E.g. 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 households
  - Know the rate paid by non-reserve households
- Review municipalities bylaws
- Identify ways FN can help municipality ex. Capital cost contributions
- Assess: services & contractors, Blue Box materials, Total collection & processing costs, disposal fees, willingness to pursue MTSA

Negotiating a Servicing Agreement

Build Trust & Understanding

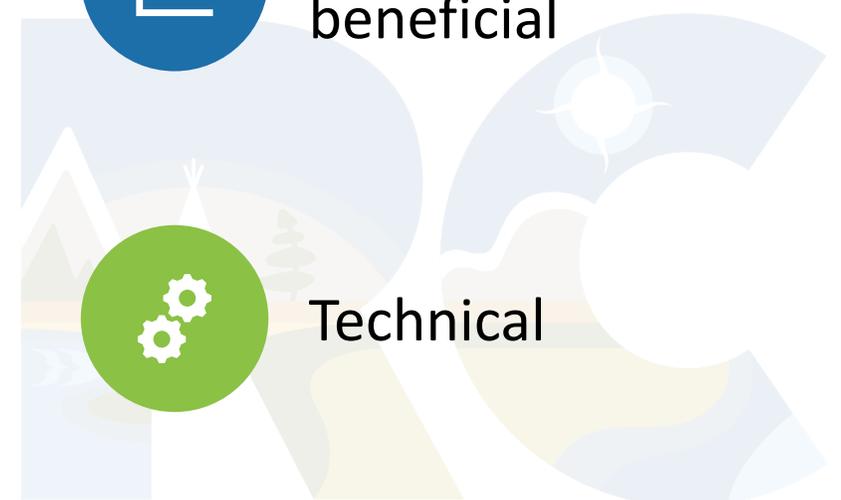Strengthens relationships

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 achieve our objectives?

- What does success look like to me?

Memorandum's of Understanding

- May be good if you're:
  - 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.
- Sets out:
  - Point person, Other parties involved, Communication:
  - general principles of working together,
  - When & how often to communicate/ meet
  - Info sharing
- Plan for developing MTSA:
  - How managing pre-work – providing info & sharing work or studies
  - Sharing info on political level
  - Timeline for negotiating MTSA
  - Resourcing

RFP Process

- Develop RFP – Issue RFP or Tender?

- Develop RFP decisions

- Issue RFP

- Evaluate Bids – Qualitative Evaluation, price evaluation

- 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 Panel
- 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
- Capacity building 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 information
- Select consultant & award contract
- Negotiate final contract
- Notify other bidders
- Begin project!

Consultant Evaluation Matrix example

Identify what values matter to you when reviewing a proposal. Rank each value in order of it's importance to you (e.g. if price is the biggest factor, rank that value as #1). Score each consultant's proposal against each value using a score of 1-5, and then multiply that score based on the importance of the value (e.g. a score of 3 for consultant #1 on Planning experience would equal 15 points, as planning experience is given a multiplication factor of 5). Tally up the total.
Always compare the results with your gut feeling!

Value	Importance (1-5) (1 = lowest importance, 5 = highest importance)	Consultant #1 Company name Contact info	Consultant #2 Company name Contact info	Consultant #3 Company name Contact info
Planning Certification & experience	5	3 (15)	4 (20)	5 (25)
Experience with Land Code Governance	4	2 (8)	2 (8)	3 (12)
Reputation & reliability	3	2 (6)	4 (12)	3 (9)
Price	2	5 (10)	4 (8)	3 (6)
Proposal meeting RFP requirements	1	2 (2)	3 (3)	5 (5)
TOTAL SCORE		**41**	**51**	**57**

Key Elements

of an MTSA

1. Term of agreement

2. Renewal terms

3. Service area

4. Level of service

5. Roles & Responsibilities

6. Rates & Payment

7. Suspension & Termination

8. Notification

9. Growth & Development

10. Dispute Resolution

11. Communication

http://www.pathwaysforservice.ca/wp-content/uploads/2016/05/2016-05-MTSA-Garbage-Collection-Handbook-FINAL.pdf

1. Term of Agreement

The term of agreement is the duration of the contract

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 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 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's important

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

Key decisions

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

Key considerations

- It is important to define as clearly as possible what areas, buildings, and/or units will be receiving the services.
- Your service agreement should include a map or specifically listed addresses.
- You may want to include maps or addresses in a schedule to the agreement, which will make it easer 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'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?

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's important

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

key decisions

- What are the responsibilities of the First Nation? Common responsibilities include:
  - Notification
  - 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
  - Liability insurance

6. Rates & Payment

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

why it's important

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

key decisions:

- 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 and Termination

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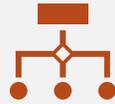
why it's important

- 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/ terminated ? With cause (failure to meet terms of agreement), What are the conditions? (e.g. failure to meet roles and responsibilities), Without cause (one party no longer wants to receive / provide services)
- What are the procedures for suspension / termination?
- What type of advanced notice is required prior to termination of the agreement? 60 days, 120 days, Other?
- How is notice given?

8. Notification

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

Why it's important   It ensures clear communication between parties and a written record of key decisions, changes, issues, etc.

Key decisions   Under what conditions is notice required? Amendments to agreement or schedules, Changes in service area, Invoicing, Renewal, Violations, Suspension / Termination of Services.

How must notice be given? In person, Mail, Email

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.
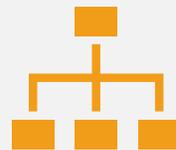
Why it's important

It identifies a process for figuring out if the growth and development can be serviced with the existing system, or if additional capacity is required.

It helps both parties **plan for the future.**

It ensures that future buildings, residents, or areas in the community receive the services they need.

10. Dispute Resolution

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

Why it's important

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

11. Communication

States how the parties of the MTSA will formally communication 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:

Stay up to date on service delivery

Discuss and resolve issues early, before they become problems

Share information, especially if there are staff changes

Build rapport and establish trust

Avoid 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

Use Plain language

MTSA's are legal documents, they require legal review

Conduct a legal review in order to:

Ensure consistency

Understand roles & responsibilities

Confirm the specifics of the services to be received

You should get a legal review:

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

Once your community & partner agreed on the components of your MTSA, a lawyer can draft & take care of the standard details:

- Schedules
- Assignment
- Acknowledgement of rights
- Headings
- Liabilities and Insurance
- Governing Laws
- Indemnity

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 levels between ISC & First Nations (Up to 80%). The First Nation will need to cover the remaining 20%

¥ Only the 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 O&M from ISC, as a fundable asset.

ISC Funding

- 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:
Residents Community buildings (band offices, recreational centres, cultural centres) Schools and day care centres	Industrial source waste Commercial source waste (gas stations, stores, warehouses, casinos) Institutional source waste (health clinics, training facilities) Private, non-First Nation source waste (such as Health Canada offices, privately owned buildings) Cottage/leased lots

Responsibilities of Parties

Responsibilities of First Nation:	Responsibilities of Municipality/Contractor:	Responsibilities of ISC:
Community notifications Liability insurance Payment on-time & in-full Provide access to reserve and pick-up areas Maintain transfer station Maintain bins Updating service areas	Responsibilities of Municipality/Contractor: Service provision on schedule and in-full Provision of their equipment and staff Invoicing Notifications Liability insurance	Review service agreement documents Respond to requests for new service agreements and renewals Confirm funding to support service agreement Enter into a funding agreement with First Nation Conduct service agreement assessment and request for renewals Review reporting provided by First Nation Update ICMS database and service agreements

ISC Funding eligibility

Eligible Solid Waste Services	Ineligible Solid Waste Services
Solid waste Collection from Transfer Station Solid Waste Disposal (including hauling and transportation fees) Solid Waste Landfill Tipping fees Hazardous waste diversion Recycling composting	Services that are already included and funded under ISC O&M Industrial

INAC - FNIF

- **First Nation Infrastructure Fund (FNIF)** – Improves & increase public infrastructure on reserves, crown land, also **off-reserve that are cost shared with non-FN partners** (Municipalities)

- complimentary source funding to CFMP – includes solid waste management

- No need to apply, projects identified through FNIPs annual process & priority ranking (may identify projects that are not documented in FNIP, 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 FN and/or cross regional boundaries
    - Are cost-shared (ex. Neighboring municipality or private sector)
    - Align with regional priorities (Munic. Prov. Fed)
    - Demonstrate the potential to partner with neighboring communities.
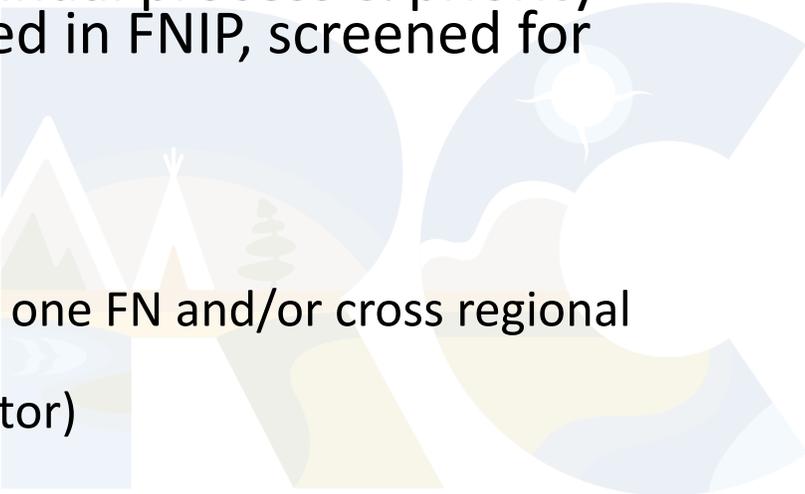
Additional resources

- Pathways – MTSA Handbook specifically for SW
  http://www.pathwaysforservice.ca/wp-content/uploads/2017/06/2017-06-12-MTSA-Solid-Waste-Checklist_Website.pdf

- Federation of Canadian Municipalities
  https://data.fcm.ca/documents/tools/cipp/CIPP_Toolkit_Unit_1_EN.pdf

- New MTSA guide will be coming out from INAC -

FIRST NATIONS LAND MANAGEMENT RESOURCE CENTRE

THANK YOU!

For more information, please visit:
www.labrc.com