

# Urban Reserve Initiative

Edmonton

## Research Findings 2021

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## INTRODUCTION: Urban Reserves 101

### What is a reserve?

First Nations Reserves are defined by the Indian Act as '*a tract of land, the legal title to which is vested in Her Majesty, which has been set apart by Her Majesty for the use and benefit of a band.*'

Reserve lands differ from other lands in that:

- Reserve lands have been set apart for the use and benefit of a particular First Nation (or multiple First Nations, also known as a joint reserve), the legal title to which is vested in the Crown;
- First Nations have a constitutionally protected interest in reserve land that includes the right to exclusive use and occupation, inalienability and the communal nature of the interest;
- The land cannot be seized by legal process or be mortgaged or pledged to non-members of a First Nation; and
- At this time, the Indian Act governs most reserve land transactions although some First Nations are opting to fall under the First Nations Land Management Act (FNLMA) regime.

### What is an urban reserve?

An urban reserve is reserve land that lies within or adjacent to an urban centre. In some cases, an urban reserve forms because a municipality has grown to surround a First Nation.

Today, there are 120 urban reserves across the country, from small urban centres like Portage La Prairie to large cities like Vancouver.

### How is an urban reserve formed?

Urban reserves are established through a process called Reserve Creation (RC) in which an urban parcel of land is added to a First Nation Band's existing total reserve land base. This reserve 'addition' occurs through one of three ways:

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1. Legal obligations or agreements - when there is a legal obligation or a legal commitment by the Government of Canada
2. Community addition - when a First Nation with an existing reserve needs additional reserve land for specifically defined purposes, including economic development
3. Tribunal decision - when a First Nation seeks to acquire land with compensation awarded by the Specific Claims Tribunal for a variety of defined reasons

Existing land or property currently owned or purchased by a First Nation could also become a reserve through a community addition process.

After a First Nation purchases land on a willing seller, willing buyer basis, the land is not considered an urban reserve until it is formally approved through the Additions to Reserve/Reserve Creation (ATR/RC) process by Canada.

The formal ATR/RC process is initiated by a First Nation submitting a Band Council Resolution and Reserve Creation Proposal to the Indigenous Service Canada (ISC) Alberta Regional office for ISC's review and if the Application is satisfactory to policy requirements, then ISC provides a (unconditional or conditional) letter of support. ISC will then work collaboratively with the First Nation to develop a workplan on the proposed Reserve Creation.

Under Canada's ATR/RC Policy, an addition to an existing reserve or creation of a new reserve can be granted through a ministerial order granted by the Minister or by an order in council granted by the Governor in Council - but only in rare situations is this latter process applicable (determined on a case by case basis).

### Where do urban reserves currently exist?

Today, there are 120 urban reserves across the country, from small urban centres like Portage La Prairie to large cities like Vancouver. To learn from the experience of other jurisdictions, a scan was done to understand the structure of various urban reserves, the agreements they have with their municipalities and the types and varieties of land uses. Specifics around the various forms and styles of agreements were highlighted as part of the Process and Procedural Working

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Group.

*For the purposes of this work, jurisdictions were primarily restricted to prairie provinces (Alberta, Saskatchewan and Manitoba) where Treaty agreements are similar.*

### Saskatchewan

#### **Saskatoon**

Saskatoon is seen as a leader in Canada for working with First Nations on establishing Urban Reserves within its boundaries and it formalized its first urban reserve in 1988.

Today, there are seven urban reserves in Saskatoon with an 8th underway:

- Muskeg Lake Cree Nation - "Asimakaniseekan Askiy Reserve," created in 1988.
  - Over 100,000 sq. ft. of retail, office & light industrial. Comprised of three separate buildings all with 100% occupancy
  - 30 businesses, over 600 employees, most full time
- One Arrow First Nation - "Sounding Sky Reserve," Fire Creek Gas and Grill, commercial development - created in 2005
- Muskeg Lake Cree Nation - "Cree Way Gas West," commercial development - created in 2011

*All of the Urban Reserves and land holdings in Saskatoon were acquired for economic development purposes and are all commercial or industrial properties.*



- Yellow Quill First Nation - paid parking lot to be developed as future office building - created in 2014
- Red Pheasant First Nation - created as a result of a City of Saskatoon boundary alteration that brought the reserve inside the city limits. It is currently a vacant lot.

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- Thunderchild First Nation - 'Retro Petro' gas station and convenience store - created in 2018
- Yellow Quill First Nation - Canterbury Towers, home of the First Nations Bank - created in 2018



The City of Saskatoon also has three 'urban land holdings' which are lands that have been transferred to a First Nation but have yet to be designated as Urban Reserves by the Government of Canada. These remain under the jurisdiction of the City and are subject to existing property taxes and municipal bylaws.

### Regina

The City of Regina currently has five urban reserves with one under development:

- Nekaneet First Nation - Creeland Minimart and Gas Bar - 1.2 acres (industrial/commercial)
- Piapot First Nation - Gas station and Convenience store - created in 2008
- Sakimay First Nation - Saulteaux Crossing Business Park - 260-acre site
  - Technically outside City of Regina boundaries but developed an MSA with the City for services
  - Gas station and commercial operations
  - Proposed motel, office building and possible convention centre
- Cowessess First Nation - commercial site - UR application underway
  - Currently vacant lot
- Star Blanket First Nation - "Atim kê-mihkosit Urban Reserve" - 32.05 acres - created in 2019
  - Home of the First Nations University of Canada
    - First Urban Reserve dedicated to education

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- Part of the University of Regina campus
  - Average annual enrolments of 3,000 and 30,000 learners
- Partnership between Star Blanket Cree Nation, First Nations University of Canada, University of Regina, Government of Saskatchewan, Government of Canada, City of Regina and CIBC
- Future plans include student residences, daycares and other support facilities



*First Nations University of Canada.*

- Under development:
  - Carry the Kettle First Nation - 300 acres - proposed industrial/commercial, residential, central 'hub' with casino, cultural centre, hotel and care home
    - Beginning to pursue urban reserve status
    - Starting negotiations on MSA

**North Battleford**

The City of North Battleford currently has two urban reserves:

- Mosquito, Grizzly Bear's Head and Lean Man First Nations - "Gold Eagle reserve" - operating a large commercial casino operation - created in 2002
  - Has four businesses operating on it, three of which are owned by the Saskatchewan Indian Gaming Authority (SIGA). The operations employ over 300 people.
  - Part of the Battleford Agency Tribal Chiefs (BATC), a tribal council with representatives from several First Nations in the area.

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*Gold Eagle Casino*

- Red Pheasant First Nation - large 346-acre parcel, pending commercial development - created in 2010

**Prince Albert**

Prince Albert currently has three urban reserves, all of which are under the jurisdiction of the Peter Ballantyne First Nation.

- Opawakoscikan Reserve - 41-acre parcel of land - includes health services, community multiplex, band offices - created in 1982
  - This reserve was extended in 1995 as part of a second application with the federal government.
- Northern Lights Casino development - created in 1997
  - 46,500 sq. ft. complex housing a casino, restaurant, lounge
  - Over 400 employees, one of Prince Albert's largest employers
  - 1 million visitors annually

**Manitoba****Winnipeg**

The City of Winnipeg has provided direction for the development of "Aboriginal Economic Development Zones" as part of its *Complete Communities* policy document. It recognizes that Canada continues to owe land to Manitoba First Nations and acknowledges that these First Nations have an opportunity to acquire lands within the City of Winnipeg as fulfillment of their Treaty Land Entitlement.

Winnipeg currently has two urban reserves:

- Peguis First Nation - 3.71 acres

*The Opawakoscikan Reserve is considered one of the first urban reserves in Western Canada.*



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- 14,125-square-foot retail complex that will house a recreational cannabis store, a restaurant, a pain management clinic and a pharmacy
- Future phases will include an office building and two 48-unit residential rental buildings
- Long Plain First Nation - 2.8 acres
  - Includes Yellow Quill College (FN education institution)
  - Commercial/retail development
  - Gas station and convenience store
  - Plans to build 80,000 sq foot office complex



In addition, two large-scale urban reserves are being proposed for Winnipeg

- Redevelopment of Kapyong Barracks - 64 hectares (proposed)
  - In April 2018, Treaty 1 Bands (Long Plain First Nation, Brokenhead Ojibway, Peguis First Nation, Roseau River Anishinabe First Nation, Sagkeeng First Nation, Sandy Bay First Nation and Swan Lake First Nation) signed an intent to use the ATR process to transfer portions of former army lands to an urban reserve
    - Reserve would be jointly managed by the seven bands
    - Formed the Treaty 1 Development Corporation (T1DC). Its mandate is:
      - To use, manage, administer and regulate its Kapyong Lands
      - To control the disposition of rights and interests in its Kapyong Lands

- To regulate the use of buildings on its Kapyong Lands
- To use, manage and administer its moneys and other assets utilized, generated and required as part of the Kapyong Lands
- To promote the general welfare of the members of the Treaty One First Nations; and
- To promote and carry out community development.
  - T1DC partnered with Canada Lands, a self-financed federal Crown development corporation
    - Proposed redevelopment plan includes a mixed-use village, commercial mixed-use, low-density housing, recreation facilities, education sites and community green space
    - The Master Plan for the barracks site reflects the City of Winnipeg's land use planning and development policy framework, as well as the City's transportation master plan, transit plan and the transit-oriented development handbook
- Peguis First Nation and Assiniboia Downs - 36 acres (proposed)
  - The First Nation is partnering with the Manitoba Jockey Association to transform the Assiniboia Downs race track into an urban reserve
  - Development plans include racetrack, two hotels, convention centre and retail space

### **Brandon**

The City of Brandon has one urban reserve:

- Gambler First Nation - approached the City of Brandon in 2016 with intent to purchase land
  - 8 acres currently zoned as commercial-arterial
  - As part of its agreement, the First Nation committed to using the City's development review process, including adhering to zoning bylaw, paying development charges, obtaining building permits and following City construction design standards.



*Proposed Development for Gambler First Nation Urban Reserve*

## Alberta

### **Regional Municipality of Wood Buffalo**

Alberta currently does not have any urban reserves but two are underway within the Regional Municipality of Wood Buffalo.

- Athabasca Chipewyan First Nation (ACFN) - 93 lots individual lots are being designated within the hamlet of Fort Chipewyan
  - One commercial
  - 92 residential
  - ACFN had managed the lots for 40 previous years
    - ACFN has committed to harmonizing its reserve bylaws with existing RMWB bylaws
    - No change in current land use is contemplated
  - Process started in 2008
- Fort McKay First Nation - 11 parcels of land within the Fort McKay community
  - Roughly 114 acres of land in total
  - Combination of Addition to Reserve and Community Additions to Reserve
  - Proposed use of the lands will be determined by the First Nation 'at a later date'

## SECTION ONE: Developing the Strategic Framework

### Benefits and Uncertainties of Urban Reserves

#### **Benefits**

Urban reserves across the country have demonstrated the ability to bring many benefits to the First Nations that establish these reserves - and to the municipalities that neighbour them. These benefits often come in the form of economic development as First Nations establish businesses on urban reserve lands that generate employment growth and contribute to the local economy. But urban reserves are also tangible examples of advancing reconciliation, improving the Treaty relationship and enhancing the respect and working relationships between First Nations and municipalities.

#### **For First Nations**

Because so many First Nations in Canada are located in remote locations, it can sometimes be difficult for Nations to generate new economic development opportunities, provide employment and training opportunities for its members and access the resources necessary to build successful businesses.

Urban reserves close the physical distance between a Nation and the opportunity to generate new wealth. They provide opportunities for First Nation businesses to establish themselves, create jobs for Indigenous and non-Indigenous people and contribute to the revitalization of the host municipality. At a more functional level, urban reserves bring First Nation businesses closer to key capital markets and sources of financing.

Many First Nations also use urban reserves to provide health, social and cultural services to Nation members who may reside in a municipality or its surrounding area. Not only does this allow the Nation to meet its objectives for serving members, it can create an ecosystem for them to interact as entrepreneurs, clients, educators, students and citizens.

#### **For Municipalities**

In any community, the opening of a new business is welcomed as a sign of positive economic development and employment growth for the municipality. The same can be considered true when an urban reserve is established - though there are also political and social advantages as well.

Through their agreements with First Nations, municipalities are able to generate revenue via the services they provide to the development. An active urban reserve site can also create other economic spin offs because of the jobs it creates and the 'downstream' spending that this new employment creates in the broader community - from housing to retail to cultural events. In other cities, urban reserves have helped revitalize businesses that have closed and activate development sites that have gone dormant.

Many municipalities that have urban reserve agreements with First Nations also find that their working relationships have improved because of the structures in place to work through challenges and arrive at solutions. By openly exchanging ideas and information with one another, relationships are made stronger and more productive.

### **Uncertainties**

Many of the uncertainties and risks associated with Urban Reserve development can arise during the negotiation of the Municipal Service Agreement (MSA) which can create tension and friction between the municipality and the First Nation.

#### **For First Nations**

For First Nations, Urban Reserves can present a significant investment and financial risk. This risk is not unlike what other private developers face; delays in approvals or construction, changes in scope or lack of servicing to the site all represent time the project is not generating revenue. The more work a First Nation can do in advance of purchasing a site to understand its servicing and possible land use, the sooner this risk can be mitigated.

#### **For Municipalities**

For municipalities, there are risks with MSAs that are not prescriptive enough or that leave room for interpretation around key issues like bylaw compatibility and their correlation to the delivery of municipal services. Some municipalities expressed some regret that their MSA did not have enough tools to be able to hold First Nations accountable when they veered from agreed-upon bylaw compatibility. At the same time, many municipalities do not take the time to understand First Nations norms, traditions and governance structures, leading to a misalignment of expectations and frustration.

Risks can also arise when a municipality challenges the jurisdiction of a First Nation, which is, in turn, a by-product of poor relationship building between parties.

In 1981, a service agreement was drafted between the City of Prince Albert and the Peter Ballantyne Cree Nation – but was rejected by the City Council who felt it challenged municipal jurisdiction over the land. The First Nation stated that it would not allow municipal jurisdiction on reserve land and city council felt that this would result in complete disregard for municipal interests. Despite opposition, in 1982, the Opawakoscikan Reserve received formal reserve land designation by order-in-council of the Privy Council. Although a formal municipal services agreement did not exist at this time, services were provided to the reserve for payments. For twelve years, the reserve operated without any problems.

### Clarifying Responsibility around Urban Reserves

Urban reserves involve the collaboration and coordination of all orders of government, with each playing an important but distinct role. Generally, the more active a partner is in the process the more successful - and mutually beneficial - the outcome generally is.

A *good neighbour* approach is considered best practice, which means that any discussions between First Nations, Local, Provincial and Federal governments should be conducted with 'good will, good faith and reasonableness' early and throughout the process. Early communication on the Reserve Creation Proposal

should proactively seek to avoid disputes, encourage cooperation among parties, and work towards building a positive, productive relationship.

### **The Government of Canada**

On behalf of the Government of Canada, Indigenous Services Canada (ISC) plays an important role in reviewing, assessing and determining if the Additions to Reserve/Reserve Creation application of a First Nation meets the ATR/RC Policy criteria. Once a proposed ATR/RC application has been successfully accepted by ISC, ISC will either issue a letter of support or non-support to the First Nation. Should the First Nation be successful in receiving a letter of support, ISC will work with the First Nation to develop a workplan specifically suited to their ATR/RC proposal.

Once the work plan components have been completed, ISC is ultimately responsible for preparing and submitting the land submission package to the Minister (or Governor in Council, if applicable).

### **First Nation**

The First Nation (or collection of First Nations) is ultimately responsible for selecting and purchasing the desired land for its urban reserve and working with the municipal and federal government to complete any paperwork required to achieve full reserve status. The Nation is responsible for any construction or development-related costs to bring the reserve into operation - including any costs related to rezoning the property for intended uses. Nations are also responsible for dialoguing with municipal governments in the development and implementation of a Municipal Service Agreement (MSA) to provide essential services to a Reserve (where needed). In addition, an agreement may be necessary to address the provision of other services, by-law compatibility, a consultation and dispute resolution process for matters of mutual concern, or potential net tax loss adjustments. To ensure success, the First Nation is also advised to develop a communication strategy that will assist with open communications with municipal residents and their own Band membership.

Under Canada's current tax law, any First Nation business operating on a reserve is required to collect provincial and federal sales tax (where applicable). The Nation is also responsible for meeting its obligations - financial or otherwise - as per the servicing agreement with the municipality.

### **The Government of Alberta**

While provinces or territories must be consulted on potential Reserve Creation, according to the federal ATR/RC policy they have no general or unilateral veto with respect to an Addition to Reserve/Reserve Creation Proposal.

The federal ATR policy gives provinces a three-month window to express any views in writing to ISC and the First Nation and set out any issues for discussion with the First Nation. It is not expected that these issues need to be resolved at this stage. These issues may inform the content of the Letter of Support, and will assist ISC in assessing the impacts and benefits of the Reserve Creation Proposal

### **Municipality**

Like the Government of Alberta, while they must be consulted, municipalities have no general or unilateral veto with respect to a Reserve Creation Proposal - but they must be consulted. Where concerns arising from these consultations have been addressed, a Reserve Creation Proposal may proceed in accordance with the ATR/RC Policy.

However, the municipality is also responsible for working with the First Nation to determine the working relationship of the urban reserve and its relation to the larger functioning of the city and the region. Municipalities are responsible for dialoguing with the First Nation in the development and implementation of a Municipal Service Agreement (MSA) to provide essential services to a Reserve (where needed). In addition, an agreement may be necessary to address the provision of other services, by-law compatibility, a consultation and dispute resolution process for matters of mutual concern, or potential net tax loss adjustments. In most cases, a fee-for-service is agreed to that is roughly equivalent to the amount the municipality would have collected through property taxes. City property taxes do not apply to an urban reserve.

*Municipalities have no general or unilateral veto with respect to a Reserve Creation Proposal.*

## Building and Maintaining Relationships

### **Understanding norms and traditions**

Even prior to any formal process directed by the Government of Canada, both the municipality and the First Nation can take proactive steps to help set the stage for a healthy, long-term relationship based on understanding, mutual respect and



trust. This involves sharing information with one another about particular traditions or norms that will influence how each party will approach the discussion.

Consider: cross-cultural workshop between First Nation and a municipality to debunk stereotypes, learn about each other's culture and identify specific management styles and administrative processes.

### Establishing a Government-to-Government Relationship

In its comprehensive guide for building strong relationships between First Nations and municipalities, the Federation of Canadian Municipalities (FCM) places particular importance on the importance of fairness when negotiating together and a mutual respect that negotiations take place in a government-to-government context.

This means taking the time to understand and respect the jurisdiction of each party and be aware of their respective cultures, rights and authorities. Without this common understanding at the outset, it is difficult to establish a productive and beneficial relationship.

Consider: members from both parties should contact their equal in the other government or community. Mayors, as political leaders, should approach the Chief of a First Nation, also a political leader. Band managers should approach Chief Administrative Officers (CAOs) as they are both heads of administration. Public works staff should feel comfortable speaking with public works staff from their neighbouring communities.

The following chart provides a quick summary of broad similarities and differences in governance structures between First Nations and municipal governments.

Table 2: First Nations versus municipal government structures and services

	First Nations	Municipality	Comparison
<b>Legislation</b>	federal <i>Indian Act</i> treaties self-government	provincial municipal acts	Both responsibilities dictated by a higher-level body, whether that be the provincial government and municipal acts, or the federal government, treaties, and the <i>Indian Act</i> .
<b>Local government</b>	band council	municipal council	Band councils and municipal councils play a similar role in terms of their decision-making authority.
<b>Head of local government</b>	Chief	Mayor Reeve Chief Elected Official	Chiefs and Mayors play a similar role in terms of their decision-making authority.
<b>Regional governance</b>	tribal council	regional district commission metropolitan community	Both may partner with other governments to form regional bodies to discuss issues of mutual concern.
<b>Head of administration</b>	Band manager	Chief Administrative Officer (CAO)	First Nations and municipal governments rely heavily on their respective administrations for necessary program delivery and support.
<b>Services provided</b>	animal control band council resolutions business licensing elections establishment of user fees fire protection forest protection housing maintenance hunting and fishing regulation immunization and quarantine land-use planning law and order lease land management management of intoxicants residential regulation road and bridge construction solid waste collection storm water street lamps survey of lands taxation traffic control water and wastewater zoning	animal control bylaws cemeteries community programming emergency planning fire protection land management local roads managing local elections parks and recreation planning policing preparation of budgets public libraries public transit regulation (building permits) sidewalks snow removal solid waste collection storm water street lamps survey of lands taxation water and wastewater zoning	Municipalities and First Nations experience a great deal of autonomy. This in terms of establishing local priorities and making decisions on the best way to provide their communities with necessary services and ensuring residents' well-being. First Nations and municipal governments provide key services such as water and wastewater, solid waste management, fire protection, and land-use planning.  A key difference in terms of law enforcement is that municipalities will often create bylaws to tailor laws to local needs and concerns. The decision to pass the bylaw lies strictly with the municipal council. A First Nation will more frequently pass band council resolutions as they may be passed solely with the approval of the band council. However, bylaws must be submitted to Aboriginal Affairs and Northern Development (AANDC) for approval and are thus much more time-consuming and tedious.
<b>Funding</b>	federal (transfers, funding agreements) tribal councils organizations (grants)	taxation provincial transfers organizations (grants) federal grants	First Nations and municipal governments are responsible for ensuring that their initiatives are backed by funds, whether that is through taxation, user fees, or transfer payments from other government bodies. All municipalities receive the most significant source of funding from property taxes and business taxes. However, not all First Nations have chosen to tax their members or charge similar rates of user fees for services.

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

## Separating the political from the technical

In evaluating successful urban reserves across Western Canada, best practice often dictates separating protocol agreements from more technical agreements - understanding that each has an important role to play in a healthy working relationship. This reflects the fact that projects like implementing an urban reserve have a completion date - but the relationship between a First Nation and a municipality is ongoing long after the reserve is up and running. Giving equal weight and attention to both processes - the technical and the political - helps set the foundation for long-term success.

Political issues include the nature of political relationships, historical tensions, governance (relationships between the four levels of government), jurisdiction and policy.

Technical issues include management of joint facilities, service agreement negotiation, engineering standards, community health and safety needs, regulations and requirements.

*Without a properly defined structure to the negotiation - and separating the political from the technical - there can be many sticking points along the way.*

Consider: Clearly identifying the 'type' and purpose of each meeting along the way to align expectations, ensure clarity and reduce frustration where possible.

## Communication

Before an urban reserve is established in a municipality, it is common for residents to have questions and misunderstandings about what an urban reserve is and what impacts it will have on their community. In the past, and even today, these misunderstandings - and in many cases prejudices - have led residents to voice opposition to Urban Reserve projects. These challenges can be met head-on through clear communication that outlines the ways in which urban reserves can benefit a community and focusing on 'myth-busting' around Urban Reserves.

Consider: develop a generic communication plan around urban reserves that focuses on myth-busting, information sharing and ways that municipalities might be compensated for any tax loss.

Communication can also have a role to play in sharing information that could streamline or assist the First Nation in selecting suitable land for its urban reserve. This information - provided early on - could help reduce some of the tension around intended land use and help the First Nation bring the Urban Reserve into operation more quickly.

Consider: develop an information package that details the spectrum of current municipal land uses (i.e. zoning rules and regulations) that could be shared with First Nations (possibly via the Confederacy of Treaty Six First Nations) to assist in determining which land use will help them achieve their urban reserve objective i.e. commercial operations, residential development, health services etc.

## Overlay with existing City of Edmonton Frameworks, Plans and Agreements

### City of Edmonton Indigenous Framework

The City of Edmonton's recently adopted Indigenous Framework sets out four roles that every City of Edmonton employee is responsible for in their interactions with Indigenous Peoples. These roles provide important guidance as staff enter into new and uncharted discussions with First Nations over the creation of Urban Reserves. These roles are as:

1. Listener: "We listen, with open hearts and minds, when Indigenous Peoples share their stories and experiences."
2. Connector: "We connect Indigenous Peoples to the programs, services, people, and resources that enrich the community and foster relationships to create positive change."
3. Advocate: "We stand with Indigenous Peoples to create a safe and inclusive city where everyone is treated with dignity and respect."
4. Partner: "We work in partnership with Indigenous Peoples on initiatives to improve the physical, mental, spiritual and emotional well-being of Indigenous Peoples in Edmonton."

### City Plan

This plan combines a Municipal Development Plan and Transportation Master Plan, and includes strategic direction in environmental planning, social planning and economic development. It sets a strategic direction for the way Edmonton grows, its mobility systems, open spaces, employment and social networks, *generally touching on most aspects of life in Edmonton.*

The City Plan does provide some direction for a number of interrelated issues associated with Urban Reserves, though reserves are not explicitly mentioned or contemplated in the document.

Key policies include:

- 3.1.1.4 – Encourage Indigenous-led projects, programs, events and services
- 3.1.2.4 – Continue to respond to the Truth and Reconciliation Commission's [Calls to Action](#) that reference municipal governments

including adopting the [United Nations Declaration of the Rights of Indigenous People](#) as a framework for reconciliation

- 3.1.3.3 – Partner to reduce barriers to education, employment and business opportunities for Indigenous people and newcomers

*Edmonton's new City Plan was ratified by Edmonton City Council in December, 2020.*

### **MOU agreements**

The City of Edmonton has MOU agreements with both Enoch Cree Nation and the Confederacy of Treaty Six First Nations (see attached documents). These agreements describe, in broad terms, the willingness of the City of Edmonton to work with these partners on issues of mutual interest and benefit. *Both of these agreements hold the City of Edmonton to a standard of relationship-building, mutual prosperity and respect for each other's culture and jurisdiction.*

### **Enoch Cree Nation MOU**

The City of Edmonton and Enoch Cree Nation signed an MOU agreement on March 10, 2017 outlining broad principles for collaboration and:

- Recognizes the Nation's right to self-government
- Recognizes both parties are best served when they work together in the best interests of their communities
- Commits both parties to establishing a government-to-government relationship
- Commits both parties to a working relationship based on communication, respect and trust
- Commits both parties collaborating on projects of mutual benefit and working to develop agreements to achieve these goals
- Commits Enoch Chief and Council, Mayor and Council and their respective administrations address issues of mutual interest
- Commits both parties to a working committee to advance collaborative dialogue and joint work, including:
  - Intergovernmental relationship building
  - Economic, social and cultural prosperity and development
  - Environmental stewardship and land use planning
  - Service utilization and agreements
  - Infrastructure establishment and maintenance
- Commits leaders of both parties to holding meetings to discuss matters of mutual concern and interest

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- Commits both parties to developing a communication protocol for information sharing

Consider: How does the development of an Urban Reserve complement, change or redirect the work prescribed in this MOU between Enoch and the City of Edmonton?

**Confederacy of Treaty Six First Nations Memorandum of Cooperation and Dialogue**

On July 6, 2012 the City of Edmonton and the Confederacy of Treaty Six First Nations signed a memorandum that *acknowledged each other in this shared place, and do embark on a renewed relationship of honour, respect and sharing of their histories, cultures and unique contributions today for the future.* It commits both parties to:

- Respectful engagements, through the creation of dialogues free from prejudice or discrimination, always respecting the diversity of all people;
- Inclusive access by all peoples of all generations for participation in celebrations and portrayals of histories and cultures; and
- Ongoing dialogues and cooperative effort around shared issues and interests that affect the long-term wellbeing of all people that call Edmonton their home.

Consider: How does the development of an Urban Reserve complement, change or redirect the work prescribed in this agreement between the Confederacy of Treaty Six First Nations and the City of Edmonton?

## SECTION TWO: The Initiation Process

### How an urban reserve is initiated

#### **Formal notification**

Indigenous Services Canada (ISC) policy sets out a four-phase process for any Addition to Reserve (ATR), including an urban reserve.

1. Initiation - the First Nation submits a Band Council Resolution and Reserve Creation proposal to the ISC regional office. Upon receipt of the resolution and proposal, ISC issues an Acknowledgement Letter to the First Nation.
2. Assessment and review - ISC reviews the proposal and advises the First Nation in writing of the results. ISC will then issue a letter of support to the First Nations with successful proposals.
3. Proposal completion - ISC and the First Nation work together to create and execute a work plan that will satisfy all of the ATR/RC Policy requirements before ISC submits the formal land submission(s) package for approval.
4. Approval - the Minister of ISC approves proposals by Ministerial Order or, if required, recommends approval by the Governor in Council for Order in Council proposals

Municipalities are formally notified as part of Phase 3 when an urban reserve is proposed for their town or city. This notification is typically directed to the Mayor.

Following this notification, municipalities are given three months to express any views in writing to ISC and the First Nation, setting out any issues for discussion.

The policy notes that:

- Further discussion of issues raised by the Local Government should not unreasonably delay the Reserve Creation.
- The First Nation is responsible for discussing issues raised by the Local Government. All issues must be addressed and documented by written correspondence between the First Nation and the Local Government before Reserve Creation.

- Where ISC is satisfied that concerns arising from these consultations have been addressed, a Reserve Creation Proposal may proceed in accordance with the Policy.

### **Informal notification**

Best practice and ISC documentation encourages that “where the Proposed Reserve Land is within or adjacent/abutting a Local Government, the First Nation is encouraged to initiate discussions with the Local Government as early as possible regarding a Reserve Creation Proposal.” These discussions can be informal, proactive and involve information sharing between the municipality and any First Nation that is contemplating an urban reserve application.

In Saskatoon, city staff are aiming to meet with most of the Saskatchewan First Nations that have been identified as having significant Treaty Land Entitlements in an attempt to proactively share information, answer questions about land use and build relationships. Because of its community relationships, the City of Saskatoon’s Indigenous Initiatives Branch is often the first to know when a Nation is beginning to pursue an urban reserve and commonly initiates early discussions between elected officials to begin building relationships.

As part of these early discussions, Saskatoon has developed a ‘first time developer’ handbook which describes land use guidelines and sets best practice for bringing a development application forward. These materials are shared with First Nations.

### **Building good relations and aligning expectations**

Through evaluating best practice from other jurisdictions and the wealth of materials available to both municipalities and First Nations from FCM, we are able to envision what an urban reserve initiation process may look like for Edmonton.

**This is presented for discussion purposes only.**

### **Step 1 - Letter of intent / initiation**

One of the first steps a First Nation and municipality can take is to informally express an interest in working together - often through a letter of intent. This document can outline, at a high level, why the two parties should work together



and is usually directed between elected officials, commonly between Mayor and Chief.

This letter would commit both parties to a future meeting where the relationship is established, key issues are 'daylighted' and an initial process is agreed to.

FCM provides a template for this kind of letter and is a good starting point for parties wishing to work together.

*Dear [Name of recipient(s)],*

*I would like to introduce myself as the [position] of [Name of First Nation or Municipality]. I have been working with [Name of First Nation or Municipality] for [number of years/months].*

*Lately, my community has been focusing on: [Discuss current overall objectives in your community, for example, economic development, increasing environmental sustainability, or improving services or infrastructure.]*

*In the next 30 days, I would like to schedule a casual [get-to-know-you meeting/breakfast/lunch/dinner] where we can learn more about each other and discuss our respective communities and our visions for the future. As we both know, it is important to know your neighbour and work together for better outcomes for both communities and the region.*

*Please let me know if there is a convenient time for you to meet with me. I look forward to building a relationship with you and your community.*

## **Step 2 - Elected official meeting to identify objectives**

At the initial meeting between elected officials of the First Nation and municipality, the two groups can begin to ask and answer some key, fundamental questions to understand the high level objectives of each party.

Questions the municipality may want to ask include:

- What sort of intended use would the First Nation have for its land?
- How does the First Nation see the reserve land integrating with the municipality, including zoning and bylaw compatibility?

- Does the First Nation have any formal principles for managing the reserve lands that would be helpful in evaluating bylaw compatibility?

The First Nation may want to use the introductory meeting to ask:

- What lands would be best suited for the kind of development it wishes to pursue?
- What is the capacity of the municipality to provide services to the development?
- What is the municipality's plan for areas adjacent to the lands being contemplated for reserve development?

### **Step 3 - Developing an MOU or Protocol Agreement**

Once a First Nation and municipality have met to discuss high-level goals and objectives for the process, the next step may be to draft a protocol agreement or an MOU between the two parties (i.e. the First Nation and Edmonton) that outlines, at a high level, some of the key points that the parties seek alignment on. This document can then form the basis of any direct discussion on subsequent formal agreements.

#### MOU Example - Regina and Carry the Kettle First Nation

The City of Regina and the Carry the Kettle (CTK) First Nation signed an MOU that gave a public signal that the two parties shared a commitment to respecting and working together - setting the tone and parameters for future MSA negotiations. The MOU outlined key guidelines, objectives and purposes for the relationship and was signed in a public ceremony with key stakeholders (including media) in attendance. It stated:

- A. *To recognize a shared interest and commitment in economic growth and development of the CTK lands, City and Region;*
- B. *To promote prosperity through cooperation and collaboration within their respective roles and responsibilities;*
- C. *To recognize and respect right of CTK and City to grow in a compatible and coordinated way, particularly as it pertains to land-use, building codes and infrastructure requirements;*
- D. *To act with mutual respect and trust for each other;*

- E. To work together through the required development and approval process in a way that respects both the regulatory and policy responsibilities of both the City, Federal Government and CTK;*
- F. To maintain open communication that is mindful of the long-term relationship between the Parties and not solely based on a current issue or conflict;*
- G. To recognize that a lack of agreement on some issues ought not to negatively affect the wider relationship between the Parties;*
- H. To provide a forum to deal with any and all issues which may arise between the Parties.*

The document acknowledged that the MOU would be superseded by the MSA when it came into effect.

#### MOU Example - Fort St. John and Doig River First Nation

The City of Fort St. John and the Doig River First Nation signed an MOU in March, 2020 to facilitate the development of an urban reserve in Fort St. John. Of the examples shared in this document, the MOU between Fort St. John and Doig River First Nation is the most detailed.

This document defines the clear purpose of the MOU, including to 'guide the negotiation and development of service agreements...that will be implemented when DRFN's land holdings within the City are transitioned to urban reserve lands.' It also sets out clear principles for further negotiations, including:

- *Development and servicing will seamlessly integrate land uses between the Nation and the City*
- *Provision of services that all other city residents and landowners receive*
- *'Cost neutral' service provision*
  - *Excludes services that the Nation provides its own members, such as legislative and administration, financial management, human resources, information technology and municipal elections*
- *Compliance and enforcement of existing City bylaws*

*The MOU also sets out a dispute resolution process that escalates from:*

- *Informal communication between City Manager and Band Administrator*
- *Negotiation (unassisted or assisted) involving elected officials from both parties and senior city staff*

- *Mediation that is binding*

*It also commits both parties to effective, regular and open communication, including;*

- *Bi-annual 'government to government' meetings*
- *Bi-annual general meeting between City Manager and Band Administrator*
- *Ongoing and proactive communication on key issues, including land development plans, servicing plans, changes to tax rates etc*

#### **Step 4 - Public signing ceremony**

A key lesson from the City of Saskatoon and its experience developing urban reserves with a number of First Nation partners was the importance of having the Mayor and the Chief present at the kick-off meeting between the two parties, establishing a government-to-government relationship.

Signing ceremonies were also deemed valuable for both parties because they demonstrated a public commitment to relationship building and provided a moment to celebrate the importance of the milestone. These ceremonies also provide an opportunity to engage the media and enhance the community's understanding of the Treaties, land entitlement and the urban reserve concept. For municipal residents in particular, signing ceremonies help put a face to urban reserves and provide context for how the reserve will be used.

#### Who needs to be involved?

##### **Building teams around the complexity of the proposal**

In its summary report on work done to create an urban reserve in North Battleford, CEDI, the City of North Battleford and the Battlefords Agency Tribal Chiefs suggested that understanding the complexity of what a First Nation intends to achieve with its urban reserve is key to making sure the right teams are in place for both parties.

Typically, the further an intended use of the property is from the zoning parameters, the more complex the teams need to be. They summarized the complexity of development as:

**Least complex**

The First Nation purchases or converts a parcel which has already been zoned/planned/serviced before becoming a reserve. Some environmental remediation may be necessary before obtaining reserve status.

**More complex**

The First Nation owns a large tract of land that needs to go through the entire municipal planning and development process, with the First Nation acting as developer, unless or until it becomes reserve land.

**Most complex**

The First Nation has undeveloped, unserviced reserve land inside or adjacent to the city. The city does not have jurisdiction over the land but may have expectations that the land be developed in a way that is compatible with the plans that they have envisioned for their community, including with respect to traffic, infrastructure and services.

Understanding where a proposed development fits on this spectrum of complexity should influence the resources and processes required by both parties to fulfill a successful agreement.

## How teams are structured in other municipalities

**City of Winnipeg**

- Representative of the City Manager's Office is a key knowledge-keeper and team-builder for urban reserve proposals
- They aim to create consistency in the team from one proposal to the next
- Core working group includes:
  - City Indigenous Relations representative
  - City planner
  - City legal representative
- A member of the Assessment and Taxation team is brought in on the MSA discussion to negotiate tax loss compensation
- Winnipeg has one very large urban reserve being proposed within its boundaries (the former Kapyong Barracks site)

- This extensive redevelopment requires City infrastructure representatives to be present because of the significant road and sewer upgrades required
- The City is aiming to create a contract administrator position for their various MSA agreements with First Nations

### **City of Saskatoon**

- Like the City of Winnipeg, Saskatoon tries to keep consistency in the people it puts on various teams to promote and develop urban reserves
- Depending on the complexity, team members change but generally always have:
  - City Indigenous Relations representative
  - City planner
  - City legal representative
- Highlighted that they are flexible in matching the capacity of the First Nation and how they will approach the negotiations/discussions
  - Conscious of not 'over-matching' with city staff

### **City of Regina**

- Representative of the City Manager's Office is a key knowledge-keeper and team-builder for urban reserve proposals
- Team is consistently made up of four individuals:
  - City infrastructure lead (primarily because the Carry the Kettle First Nation is developing greenfield lands that will need to tie into City services)
  - City legal representative
  - City planner
  - City Indigenous Relations senior advisor
- Experiences in Regina (and noted in other cities) was the desire to have a communications and engagement team member included in the process as well

## **SECTION THREE: The Role of Formal Agreements**

As part of any urban reserve application submitted to the Minister, ISC requires both the First Nation and the municipal government to develop a bylaw

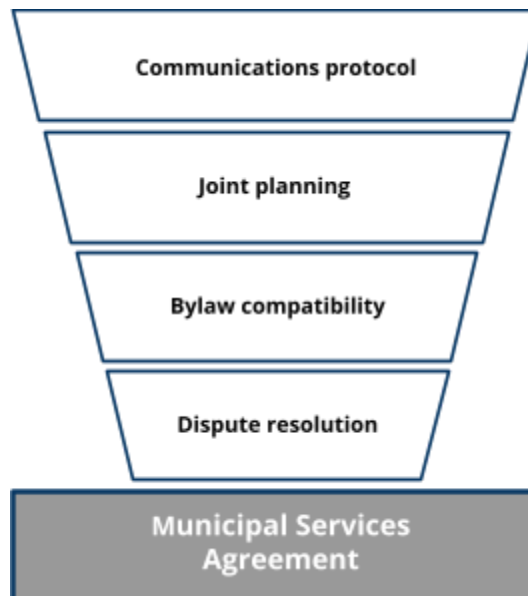
compatibility and municipal services agreement. Municipal services agreements are the culmination of significant collaboration, discussion and negotiation between the two parties - with each step setting the stage for the next.

### Types of Agreements

Municipalities can enter into a number of agreements with First Nations related to urban reserves but the bulk of these agreements can be tied together within a Municipal Services Agreement (MSA).

However, before an MSA can be signed by its parties, discussion and agreement on several important key elements must take place. These can take the form of standalone agreements or be wrapped up within the terms of an MSA. These elements include:

1. Communications protocols
2. Joint planning
3. Bylaw compatibility
4. Dispute resolution



### Communications protocol agreement

A communications protocol agreement can also be defined as a memorandum of understanding or a relationship agreement that helps define the scope of a relationship between a municipality and a First Nation. MOUs are discussed in

Section 2 of this report and best practice suggests that these are signed at the outset of the partnership - and often between elected officials.

Communications protocol agreements can commit both parties to specific activities that build trust and encourage an open and honest dialogue throughout the process. The MOU signed between Fort St. John and Doig River contains a section detailing best practice for their communication:

*The Parties recognize that effective, regular, and open communication is key to the success of a government-to-government relationship.*

*Therefore, the Parties agree that:*

- *Recurring meetings will be held for general communications and cultural sharing. These meetings will be attended by representatives from the Council and Staff members from both Parties. At a minimum, these meetings will include:*
  - *A bi-annual Government to Government meeting.*
  - *A bi-annual general meeting of the City Manager and Band Administrator.*
- *There will be proactive and open communications regarding, but not limited to, the following subjects:*
  - *Land development plans, including neighborhood plans*
  - *Servicing plans including long term plans, annual capital plans, and operating budgets*
  - *Changes to taxes, rates, and fees*
  - *Updates to additions to reserve and land code processes*
  - *Updates to community plans*
  - *Changes to regulatory frameworks or bylaws or bylaw enforcement procedures*
  - *Larger developments that may have a significant impact on rates and fees (e.g. Assembly Hall or Community Centre)*
  - *Local area service initiatives*
  - *Capital projects or works undertaken by one Party that may impact the business or operations of the other Party*



## Joint planning agreement

To prepare for an MSA, and depending on the size of the development, both the municipality and the First Nation may choose to work together on developing joint documents like area or site plans to help address shared issues and outline how an area will evolve over the long term. Through these joint documents, both parties can identify current priorities and plot future opportunities for collaboration.

Joint planning work can encourage land use harmonization and complementary development in an area, especially if an urban reserve site is large and unserved, ensuring development is suitable for the area and its surrounding neighbours. Joint planning work can address issues such as:

- Land use and development
- Environment
- Servicing
- Infrastructure
- Finances
- Economic development

Both parties can consider establishing a joint planning committee to begin the process of determining complementary land use, bylaw compatibility and - ultimately - developing an MSA.

In the case of the **Regional Municipality of Wood Buffalo and the Fort McKay First Nation**, the joint committee membership is made up of:

- *Fort McKay First Nation senior representatives*
- *Fort McKay First Nation support team, including planning consultants*
- *Regional Municipality of Wood Buffalo Senior Managers, including:*
  - *Planning and Development*
  - *Accounting*
  - *Engineering*
  - *Economic Development*
  - *Land Administration*
  - *Indigenous and Rural Relations*

This joint committee played an active role in reviewing possible sites for an urban reserve, taking into consideration land use and future development opportunities, as well as current and future serviceability.

In Prince Albert, both the **City and Peter Ballantyne First Nation** established a joint planning committee to not only develop the servicing agreement but to ensure its long-term, harmonious operation. Both the Mayor and a Councillor are members, as is the Director of Planning, along with two members of the Peter Ballantyne First Nation. The committee meets twice a year - or as required.

### **Bylaw compatibility agreement**

Bylaw compatibility is a key part of any discussion/negotiation between a First Nation and municipality. Best practice indicates that bylaw compatibility should be determined early on in the process so that it can be included within the Municipal Service Agreement – and the provision of municipal services can be tied directly to bylaw compliance.

ISC's policy directive on urban reserves indicates that a First Nation and municipality may wish to achieve bylaw compatibility in areas such as:

- land use or zoning standards
- building and safety standards
- public utilities
- animal control
- health and safety
- traffic regulation
- property maintenance

In the vast majority of cases, First Nations agree to comply with a municipality's existing bylaws. However, as FCM notes, *"By-law compatibility does not mean that all the by-laws must be the same, but rather that both parties have considered how well their laws fit together"*.

An excerpt from the MSA between Kahkewistahaw First Nation and the City of Saskatoon is representative of many clauses found in MSAs across Western Canada:

1. *Kahkewistahaw agrees that it will take all steps and do all things as may be necessary, including passing and enforcing compatible bylaws, as acts of Kahkewistahaw governance, to ensure that, at all times, the occupation, use, development and improvement of the Land is essentially the same as the occupation, use, development and improvement of the Land which would be allowed if the Land were non-reserve land. Specifically, Kahkewistahaw agrees to ensure such compatibility in regard to land use, building and fire standards, public health and safety, and business regulation.*
2. *If, at any time the occupation, use, development and/or improvement of the Land is not essentially the same as the occupation, use, development and/or improvement of the Land which would be allowed if the Land were non-reserve land, and such condition of breach continues for a period of 30 days following written notification by the City to Kahkewistahaw of such breach, the City may, at its option, and without prejudice to any other remedy which may be available, suspend or withdraw any or all of the services which it provides to the Land, and/or the occupants of the Land, other than emergency response services by police and fire, until the condition of breach has been remedied.*

As described above, a joint planning committee could:

- Provide recommendations on areas where compatible bylaws are needed
- Develop guidelines on content of compatible bylaws
- Review existing FN and municipal bylaws to determine compatibility
- Review any proposed mutual bylaws prior to adoption to ensure compliance with guidelines and identify conflicts
- Advise both councils in writing of concerns and recommended changes
- If agreement can't be made, could be referred to a dispute resolution process

## **Dispute resolution agreement**

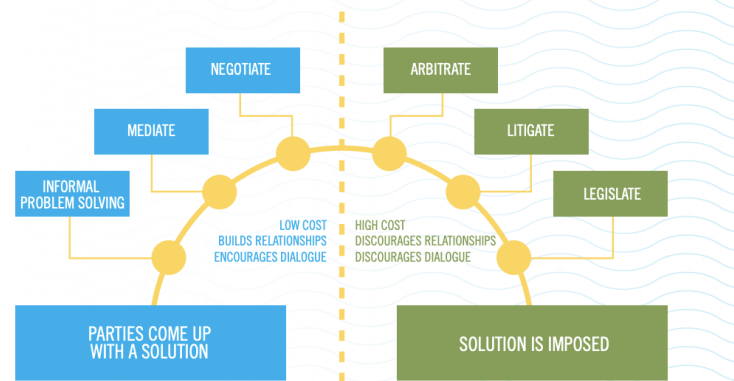
Many MSAs commit elected officials from both parties to annual meetings to discuss and address matters that arise between them – before they need to be

escalated through more formal channels. *"The simplest way to address conflict is to prevent it"* as the City of Winnipeg notes in its best practice document.

Detailing dispute resolution mechanisms should be part of any formal agreement between the municipality and the First Nation.

Dispute resolution methods can be plotted on a continuum:

Figure 1: Dispute resolution continuum



Source: Adapted from Dispute Resolution Services, Alberta Municipal Affairs.

ISC's Policy Directive on Additions to Reserve/Reserve Creation promotes a 'good neighbour' approach that encourages *discussions on issues of mutual interest and concern that are conducted with good will, good faith and reasonableness, and within reasonable timeframes*. The policy encourages:

- Early communication on the Reserve Creation Proposal that proactively seeks to avoid disputes, encourages cooperation among parties, and works towards building a positive relationship;
- The development of mutually agreeable approaches to dispute resolution between the parties at the outset of discussions in order to identify and address areas of disagreement quickly, and facilitate further resolutions as they may arise in the negotiation of agreements;
- **The inclusion of dispute resolution mechanisms in any final agreements between the parties**, where appropriate, to address future disagreements as they arise;
- the establishment of mutually agreeable time frames for efforts to resolve disagreements; and

- the use of mediation where negotiations have reached an impasse.

This process should escalate along the following track:

- a. Conciliation: The parties may try to work out the issues by themselves such as at a joint meeting between the First Nation council and the other party. In the alternative, the parties may work out the issues with the assistance of a third party;
- b. Facilitation: The parties may request assistance from neutral third party for facilitation of a joint meeting to support discussions that assist the parties to identify issues, and develop options to resolve disputes; and
- c. Mediation: Pursuant to this process, a third party assists in working out a solution to the dispute. A decision is reached by consensus, which may or may not be binding depending on the terms of the mediation.

Dispute resolution is reflected in many MSAs between First Nations and municipalities across Western Canada.

- The MSA between Regina and George Gordon First Nation contains a clause that refers both parties to binding arbitration to resolve any dispute that **does not** include levies or surcharges
  - Levy or surcharge disagreements result in a joint meeting between the two elected Councils in an effort to reach agreement on the issue
  - If no agreement is reached, George Gordon First Nation may serve notice to arbitrate the issue
- The MSA between Saskatoon and Kahkewistahaw First Nation refers any dispute with regards to the interpretation or enforcement of the agreement to binding arbitration
  - One representative of each party form part of the panel
  - If a Chair cannot be mutually agreed upon, the Chair is appointed by the Dean of Law, University of Saskatchewan
- The MSA between Winnipeg and Peguis First Nation recommends that:
  - *In the event of disputes between the City and Peguis that cannot be resolved by them or at a Consultation and Review Process, the parties will go to mediation or binding arbitration.*

## Municipal Service Agreements (MSAs)

MSAs are the ultimate tool by which arrangements are made for the provision of and payment for municipal services - and the terms that both parties agree to in order for these services to continue.

### Key elements of an MSA

In its policy documents, ISC gives some direction on what an MSA may wish to address.

Topics include:

- A description of the services that the Local Government is able and willing to supply to the First Nation;
- The basis for the charges levied by the Local Government;
- Payment due dates;
- The manner in which the First Nation will be billed for the services;
- Fees for administration and legal costs;
- Access by the Local Government to install, maintain and operate the services;
- Access for emergency services; including fire protection;
- Upgrading, improvement, replacement or major repairs respecting services;
- Costs for related engineering studies; and
- Impacts of major development on the Reserve which may affect provision of current or future municipal services.

As part of its work to support ongoing collaboration between First Nations and municipalities across Canada, the Federation of Canadian Municipalities (FCM) provides frameworks, guidelines and templates for structuring servicing agreements between Nations and cities. Their municipal service agreement handbook outlines a number of key components that should be included in any service agreement, along with ways to add site-specific provisions relative to urban reserves.

### Key contract elements of a service agreement:

- Effective date

- Parties to the agreement
- Authority to enter in agreement (i.e. approval from band council or municipal council)
- Preamble (describes purpose and background for the agreement)
- Definition of terms
- Term of agreement (can define the period of time for the agreement and/or ability to terminate the agreement with reasonable notice)
- Renewal of agreement (stipulates the a time frame for renegotiation and terms in case agreement expires before a new agreement is reached)
- Constitutional and legislative changes (how to resolve challenges arising from legislative changes i.e. environmental regulations, water regulations etc)
- Consent by interested party (ensuring third parties i.e. developers are aware of the provisions of the agreement)

#### **Description of services in a service agreement**

- Description of services provided
- Level of services (often defined as equal to those of residents in the broader community)
- Charges for services (costs for services, including caveats for any increases, including both capital and operating costs)
- User fees (any additional charges for services i.e. building inspection etc)
- Bill payment
- Payment penalties and termination for breach of agreement
- Construction of infrastructure (who is responsible for constructing any new infrastructure required)
- Ownership of infrastructure
- Repair (describes processes for repairing, upgrading or integrating the services)
- Access and rights-of-way (means to ensure access for staff and contractors to the land, including fire protection)
- Liability (defines liability for service provision)

#### **Customary provisions**

- Notice (ensures that all parties will always be able to contact each other)

- Entire agreement (outlines which documents are considered part of the agreement i.e. attachments, maps etc)
- Headings
- Amendments (outlines how and when future changes may be made)
- Assignment (in the case of an amalgamation, details who adopts the agreement)
- Enurement (ensures agreement binds current and future parties to the agreement)
- Severance (ensures the main agreement remains intact if a single provision is deemed invalid)
- Waiver of breach (ensures that rights cannot be waived except by written agreement vs. silence or inaction)

#### **Additional provisions**

- Conflict and dispute resolution (sets the method of resolving disputes and its terms)
- Further assurance and compatible bylaws (could include which bylaws will apply, i.e. fire protection or animal control, or new comparable bylaws are required)
- Consultation (a commitment by both parties to consult with one another about key issues like land management, economic development and environmental sustainability)
- Regional integration (ensures both parties act according to regional standards and participate in regional initiatives)

#### **What services should be included in an MSA?**

Best practice suggests that as many services as possible should be considered when drafting an MSA between a municipality and a First Nation. When developing agreements, FCM reiterates that it is important to be as clear as possible about what those services entail, and could include schedules with maps of serviced properties, lists of facilities and service schedules (e.g., schedules for solid waste pick-up or transit timetables).

Common services provided for in an MSA include:

- Water and wastewater



- Solid waste (garbage collection)
- Building permits and inspections
- Fire protection and emergency response
- Transit
- Animal control
- Parks and community services

### **Fees for service**

MSAs spell out how a municipality will be compensated for providing municipal services to a First Nation in lieu of not receiving property tax income in return. In many cases, this 'fee for service' is calculated in exactly the same way as property taxes and is the exact same amount as would be billed for municipal taxes - paid annually as a property tax bill typically is. MSAs set out the terms for these fees.

A representative example of a fee-for-service clause can be found in the MSA between George Gordon First Nation and the City of Regina:

*Upon obtaining reserve status, George Gordon will have jurisdiction to control and implement its own tax system on the reserve lands. However, as with all MSAs entered into between the City and a First Nation, George Gordon agrees to pay, in consideration for the services, an annual amount which equals the municipal and library portion of the property tax and special tax levy for any given year that would have been levied on the land, if the land were not reserve land.*

It is worth noting that some municipalities and First Nations agree to subtract a portion of fees for services that may be considered duplicative government services to ones a First Nation provides to its members. The MOU between Doig River First Nation and Fort St. John outlines some basic principles for this calculation:

*Rates and fees for service provision to urban reserve lands will be determined in a service agreement...Self-contained government support services provided by the City under the fee simple framework, will be excluded/no longer required for urban reserve lands. This includes services such as: legislative and*

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*administrative, financial management, human resources, information technology, and municipal elections.*